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PART II—Section 2

Bills and Reports of Select Committees on Bills

PARLIAMENT OF INDIA

The following Bills were introduced in Parliament on the 12th April, 1951:—

BILL No. 74 of 1950

A Bill to provide for the appointment of persons to the office of Kazi and for performing and keeping a record of marriages and for the appointment of Tribunals for trying and deciding cases of divorce and dissolution of marriage amongst Muslims.

BE it enacted by Parliament as follows:—

1. Short title, commencement and extent.—(1) This Act may be called the Muslim Kazis Act, 19

(2) It shall come into force at once.

(3) It extends to the whole of India.

2. Appointment of Kazis and Tribunals.—(1) In accordance with the provisions contained in this Act State Governments shall appoint persons with proper qualifications as Kazis for presiding at Muslim marriages and performing other religious ceremonies, at which the presence of Kazi is necessary according to Muslim Law and usage. The State Governments shall further appoint Tribunals for deciding suits relating to divorce and dissolution of marriages amongst Muslims.

(2) For the purpose of selection and nomination of candidates for the posts of Kazis and for the membership of the Tribunals, the State Government shall appoint in each District, a committee, called the District Committee.

3. Composition, term and duties of District Committees.—(1) The District Committee shall consist of the following members:—

(a) The District Judge of the District who shall also be the president of the District Committee.

(b) The Collector or the Deputy Commissioner of the District who shall also be the convenor of the District Committee.

(c) One Muslim Vakil or Advocate elected by the Muslim Vakils and Advocates of the District.

(d) One Muslim member of a Municipal Board of the District elected by the Muslim members of the Municipal Board of the District.

(e) Two Ulemas elected by the Ulema of the District holding certificates of Colleges mentioned in Schedule 'A' to this Act.

(f) All the Muslim members of the Legislative Assemblies of States and Parliament.

(2) The members shall hold office for a period of five years but in case of a seat falling vacant during this period the vacancy shall be filled up by the election of a member from the class to which the late member belonged and such member shall hold office for the remaining period.

(B) The quorum of the District Committee shall be five.

(4) The duties of the District Committee shall be;

(a) to make recommendations to the State Government about the number of Kazis necessary for the District and their proposed jurisdictions.

(b) to make recommendations to the State Government about the number of Tribunals for trying divorce and dissolution of marriage suits and their proposed jurisdictions.

(c) to recommend to the Local Government the names of persons, with requisite qualifications, who are to be appointed as Kazis and as members of the Tribunals.

(d) to supervise the work of Kazis and Tribunals of the District and to make occasional reports about their work to the Government.

4. Procedure for the appointment and removal of Kazis.—(1) The Kazi shall be appointed by the State Government on the recommendation of the District Committee, and shall not be removable from his office, but for incapacity or misconduct in the discharge of his public duties, or acts of profligacy in his private conduct, proved to the satisfaction of the State Government.

(2) The District Committee shall report to the State Government every instance in which it may appear to them that any Kazi in the District is incapable, or in which it may be proved to their satisfaction that he has been guilty of negligence or misconduct in the discharge of his public duty or of acts of profligacy in his private conduct.

5. Qualifications for the post of a Kazi.—(1) For an appointment to the post of a Kazi a person must be educated, honest, conscientious and well versed in questions relating to marriages, divorce and dissolution of marriages:

Provided that for appointment to the Tribunal for dissolution of marriages he shall have obtained a certificate from any of the Islamia Schools mentioned in Schedule 'A' to this Act, and further shall have passed an examination of the said Schools in Heilat-un-Najaza and Alamgiri (Chapters on *Nikah* and *Talak* only) held specially for the purpose.

(2) In making appointments to the post of a Kazi, preference shall be given to a person who in addition to the qualification mentioned in sub-section (1) is held in esteem by the Muslims of the city, town or purgana in which he is to hold office, due to the status of his family or belongs to a family in which the post of Kazi had been hereditary in the past.

6. Appointment, qualifications, and removal of Naib Kazis.—(1) Subject to the approval of the District Committee a Kazi shall have power to appoint one or more Naib Kazis.

(2) A Naib Kazi shall be required to be literate and conversant with questions relating to marriages.

(3) A Kazi shall have power to remove his Naib Kazi.

Maintenance of records of marriages and suits.—(1) The Kazi either by himself or through his Naib Kazi shall keep a regular record of marriages taking place within his jurisdiction, giving the names of the parties to the marriage; of the guardian of the marriage—if any—of the vakil—if any, of the witnesses to the marriage, and of the person who performed the *nikah* ceremony, and the record shall be signed by all of them. The age of the parties, the fact as to whether the marriage is a first or second one, the amount of dower—with details of prompt and deferred, the date of marriage and the date of entry shall also be recorded. A copy of the record shall be given to each of the parties.

(2) Subject to the provisions of sub-sections (2) and (3) of section 8 when an entry is made in the record of Kazi regarding marriages which have not been performed by the Kazi or one of his Naibs all the details mentioned in sub-section (1) of this section shall be filled up but the record may be signed by the parties and their guardians if any, only:

Provided that before making the entries the Kazi shall satisfy himself as to the factum of marriage, and would make remarks to the effect in the register as to whether he considers it to be genuine or otherwise. For this purpose the Kazi may get the record signed by such other persons as were present at the time of marriage.

(3) The Kazis who are members of a Tribunal for dissolution of marriages shall further keep record of the suits tried by the Tribunal giving details in accordance with the rules framed by the State Government in this behalf.

8. Marriage fees and the right of parties to a marriage.—(1) The fees for every marriage shall be two rupees and eight annas. The parties to the marriage, however, may give any larger amount to the Kazi at their option.

(2) If in spite of invitation, a Kazi or Naib Kazi fails to attend a marriage, and the marriage is celebrated in their absence, the parties to the marriage and their guardians, if any, shall be entitled to get entries made in the record of the Kazi without payment of any fee within fifteen days of the marriage, and with the payment of two rupees and eight annas thereafter.

Provided that no entries shall be made after the lapse of thirty days after the marriage.

(3) If a marriage is celebrated without the information of Kazi or Naib Kazi by some other person the parties to the marriage and their guardians, if any, shall be entitled to get entries made in the record of the Kazi after payment of rupees five within fifteen days of marriage and with payment of ten rupees thereafter.

Provided that no entry shall be made after the lapse of thirty days of the marriage.

(4) Any person placing reliance or leading evidence in any civil or criminal suit in respect of marriage which was celebrated after this Act comes into force, and which is not entered in the register of the Kazi, shall have to pay a penalty of rupees fifteen before he can be allowed to place reliance on or lead evidence in respect of such marriage.

9. Composition and functions of the Divorce and Dissolution of Marriage Tribunals.—(1) The Tribunal which shall be appointed to decide the divorce and dissolution of marriage cases shall consist of the following members:—

- (i) One Kazi out of the Kazis of the District;
- (ii) two Muslim Vakils or Advocates from the Muslim Vakils or Advocates of the District; and

(iii) two Ulemas from the Ulemas of the District holding certificate of any of the Schools mentioned in Schedule 'A' to this Act.

(2) The District Committee shall make recommendations to the State Government of names of the members of the Tribunals according to sub-section (1) and the State Government shall make the appointments.

(3) The Tribunal shall try and decide suits relating to marriages, divorce and dissolution of marriages falling within its jurisdiction.

10. Procedure for obtaining a divorce or dissolution of marriage.—(1) Any person desirous of having a divorce or getting a marriage dissolved, or getting a declaration to that effect may file a plaint in accordance with the provisions of the Code of Civil Procedure, 1908 (V of 1908), before the Kazi or a person appointed by the Kazi for receiving such plaints.

(2) A fee of fifteen rupees shall have to be deposited with each plaint. This sum shall be utilized for the expenses of the Tribunal and shall be at the disposal of the Kazi.

(3) The Kazi in consultation with the Tribunal shall fix dates for the filing of written statement and of the hearing of the suit.

(4) The summons on the defendant and on the witnesses shall be served through the Civil Court of the Lowest Grade having jurisdiction in the area, and the parties concerned shall have to deposit process fee and diet money in accordance with the rules of the Civil Court.

(5) The quorum of the Tribunal shall be three:

Provided that at least the same three members shall hear the suit throughout.

(6) The decisions of the suit shall be according to the opinion of the majority and in case of equality of votes the Kazi shall have a second or casting vote.

(7) The majority shall write the judgment and sign it, but the final order shall be signed by only one member, preferably by the Kazi if he happens to be with the majority.

11. Term of appointment of members of the Tribunal.—(1) The members of the Tribunal will be honorary, and shall be appointed for a period of five years, but would be eligible for re-appointment after the expiry of their term:

Provided that if during the hearing of the suit the period of a Tribunal or of one of its members comes to a close, even then they will have a right to finish the suit or suits, but they will not be entitled to hear new suits.

(2) If during the term of the Tribunal a vacancy falls, due to the resignation, retirement, death or other cause, it would be filled up by nomination according to section 9 from the group from which such member had been nominated:

Provided that so long as the number of the members of the Tribunal does not fall below three, nothing done by the Tribunal shall be deemed to be invalid merely by the reason that the number of the members of the Tribunal was at any time less than five.

12. Powers of the Tribunal in respect of the dower-debt.—The Tribunal shall have no power to pass any judgment in respect of any dower-debt except that it may record a compromise between the parties, in respect of renunciation of dower-debt or part thereof, in lieu of dissolution of marriage.

13. Remedy against the decision of the Kazi.—(1) Any one dissatisfied with the judgment and decree of the Tribunal may apply to the Kazi to send the record to the District Judge for obtaining his opinion thereon.

(2) On the presentation of such an application the Kazi shall send the whole record to the District Judge with a request to give his opinion thereon both on matters of fact and of law.

(3) The District Judge after notice to the parties and hearing such of them as want to be heard shall give his opinion and send back the record to the Kazi, and the Kazi shall pass judgment and decree according to the opinion of the District Judge:

Provided that the District Judge may send the record to any one of his subordinate Courts having the power of hearing appeals under the Code of Civil Procedure, 1908 (V of 1908), to give its opinion, and the opinion of such court shall have the same effect as the opinion of the District Judge.

14. Remedy against the decision of the District Judge.—(1) Any party dissatisfied with the opinion of the District Judge may apply to the Kazi for sending the record of his case to the High Court for opinion.

(2) On the presentation of such an application the Kazi shall send the record with the opinion of District Judge to the High Court.

(3) The High Court shall after notice to the opposite party give its opinion on the same points on which it hears second appeals under section 100 of the Code of Civil Procedure, 1908 (V of 1908).

(4) The procedure provided by the Code of Civil Procedure, 1908 (V of 1908), for the hearing of the second appeals from the decree shall be followed for the disposal of these cases.

(5) On receipt of the opinion of the High Court the Kazi shall pass a decree in accordance with the opinion of the High Court.

15. Proceedings before the Tribunal.—All the proceedings before the Tribunal shall be in accordance with the Code of Civil Procedure, 1908 (V of 1908), and the Tribunal for purposes of trial of suits under this Act shall be deemed to be a Court.

16. Power of the State Governments to make rules.—(1) The State Government may make rules consistent with this Act for the purpose of carrying out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the State Government shall have power to make rules with reference to the following matters:—

(a) For the election of the members of the District Committee under section 8.

(b) For the selection and nomination of the Kazis and members of the Tribunal under sections 4 and 9.

(c) For the holding of the meetings of the District Committee and the procedure to be adopted by the Committee.

(d) For the reports to be made by the District Committee to the State Government.

17. Power of the State Governments to alter the Act.—The State Government shall have power to make alterations in this Act in the following matters:—

(a) Making necessary amendments, alterations or additions to the entries required to be made in the records under section 7.

(b) Increasing or decreasing the fees prescribed in section 8 of the Act.

(c) Making necessary amendments, alterations in the list of Schools or Colleges given in Schedule 'A' to this Act.

18. Repeal of Act XII of 1880.—The Kazi's Act, 1880 (Act XII of 1880) is hereby repealed.

SCHEDULE A

(See sections 3, 5, 9, and 17)

List of Approved Islamiyah Schools and Colleges

Darul Ulum, Deoband.
 Mazahirul Ulum, Saharanpur.
 Madarsah Khanqah Imdadia, Thana Bhawan.
 Madarsah Shahi, Moradabad.
 Madarsah, Amroha.
 Madarsah, Gulauti.
 Madarsah, Budaon.
 Madarsah, Bareilly.
 Madarsah Illahiat, Kanpur.
 Arabic Madarsah, Allahabad.

STATEMENT OF OBJECTS AND REASONS

According to Muslim Law the decree of Kazi duly appointed by the State is necessary for certain socio-religious and religious matters such as dissolution of marriages. In addition to these the Kazi is to preside and perform certain ceremonies such as the marriage ceremony and is to conduct the Juma and Id prayers. After the settlement of Muhammadans in India, Kazis were appointed by the State for the cities, principal towns and in the parganahs for performing all the duties allotted to them by the Muslim Law. On the inception of the British Rule their status was recognised by the British Government. Regulation XXXIX of 1793 was the first one in this connection. It was intended to provide for the recognition and appointment of Kazis and Kazi-ul-Kazis. The Government of the State gradually similar Regulations and Acts were passed for other provinces. In addition to the Kazis, however, there used to be Hindu and Mohammedan Law Officers attached to the courts to help those courts in the administration of Hindu and Mohammedan Law respectively. The courts at the time having had no training in those branches of law. This had become necessary as the East India Company was gradually transferring the administration of justice from the hands of Indians to those of the English Judges—and was thus necessarily a transitory stage. It appears that in 1864 Hindu and Mohammedan Law Officers were deemed to have served their purpose in having given the necessary training to the English Judges and having produced sufficient quantity of legal precedent to guide future courts. They were no more required and were thus removed by Act XI of 1864. But along with the Hindu and Mohammedan Law Officers, the Regulations and Acts relating to Kazis, were also repealed.

The Late Sir Ahmad Khan brought a Bill in the Legislative Council in 1880, which was passed as Act No. XII of 1880 and was named Kazi's Act. That Act authorized the Local Government to appoint Kazis for any particular area on the desire of the Muslim community living in that area, but gave him absolutely no powers.

Thus it is only to meet a well recognized and old standing need of the Muslim community that this Bill is being introduced. Its scope is very restricted as it gives much smaller powers to the Kazi than the functions that were

MOHAMMAD AHMAD KAZMI

A Bill further to amend the Indian Penal Code (XLV of 1860) and the Code of Criminal Procedure (V of 1898).

1. Short title and commencement.—(1) This Act may be called the Indian Penal Code and the Code of Criminal Procedure (Amendment) Act, 1956.

2. Amendment of section 375, Act XLV of 1860.—In section 875 of the Indian Penal Code (XLV of 1860) in clause 'Fifthly' for the word "sixteen", the word "eighteen" shall be substituted.

3. Amendment of section 376, Act XLV of 1860.—To section 376 of the Indian Penal Code (XLV of 1860) the following shall be added at the end, namely:—

Page 51. "or unless the woman is between sixteen and eighteen years of age and is a consenting party to the sexual intercourse in which case he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both".

4. Amendment of Schedule II, Act V of 1898.— In Schedule II to the Code of Criminal Procedure, 1898 (V of 1898) before the entry relating to the heading 'in any other case' against section 376 of the Indian Penal Code (XLV of 1860) the following shall be inserted, namely:—

| | | | | | | |
|---|----------------|----------------|----------------|---------------------|---|---|
| <p>"If the sexual intercourse was with a woman between sixteen and eighteen years of age and she was a consenting party</p> | <p>-Ditto-</p> | <p>-Ditto-</p> | <p>-Ditto-</p> | <p>Compoundable</p> | <p>Imprisonment of either description for 2 years or fine or both</p> | <p>Court of Session, Chief Presidency Magistrate or District Magistrate or Magistrate of the first class"</p> |
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STATEMENT OF OBJECTS AND REASONS

This Bill is designed to raise the age of consent of girls in extra-marital cases of rape to 18 years from 16 years as it is at present. As to the age of consent the Committee recommended the raising of age to 18 years but the recommendations have not been given effect to so far.

2. Now under the present stress of civilisation when better and more extensive opportunities exist for college and other kinds of education and employment in factories and offices, a young girl is more exposed than before and requires more protection. The age of a girl between 16 and 18, when she has no experience of the world, is the age when the law should cast its protecting wings around her. Her immature judgement and inexperience of worldly affairs entitles her to be treated as not fully grown up and no body should be allowed to take advantage of her undeveloped intellect. In the eye of the law a girl of 18 is an infant, not capable of disposing of her properties. Obviously, therefore, the age of consent at the extra marital case should not be less than 18.

3. A girl of 16 to 18, though not possessed of full developed intellect, is still in some cases fairly competent to understand consequences as well to express her mind and represent her feelings. In some cases young students or workers may be victimized and situations may arise when the enormity of the offence is very much mitigated by the surrounding circumstances. In such cases the parties should have the power of compromise in their own hands to avoid harassment of the law. It is therefore expedient to make the offence compoundable when the age of the girl is between 16 and 18 years.

In the present circumstances of the society, it is both necessary to give protection to young girls below 18 years by raising the extra marital age to 18 and at the same time not to treat the offender very harshly in case the girl is a consenting party.

THAKUR DAS BHARGAVA,

BILL No. 100 OF 1950

A Bill further to amend the Coffee Market Expansion Act, 1942.

Be it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Coffee Market Expansion (Amendment) Act, 19

2. **Amendment of section 4, Act VII of 1942.**—After clause (d) of subsection (2) of section 4 of the Coffee Market Expansion Act, 1942 the following new clauses shall be inserted, namely:—

“(e) three persons representing the Robusta coffee growers, one each to be nominated, in consultation with the Robusta coffee growers, by the Governments of Madras and Mysore and one to be nominated by the Chief Commissioner of Coorg in consultation with the Robusta coffee growers in Coorg;

(f) one person nominated by the Robusta Coffee Growers Association of South India, Pellibetta, Coorg; and

(g) two persons to be elected by Parliament to represent consumers' interests.”

STATEMENT OF OBJECTS AND REASONS.

There are two distinct varieties of coffee grown in India viz., Arabica Coffee and Robusta Coffee. As much as one-third of the quantity of coffee produced in India is the Robusta variety and large acreages of new plantations are now covered by this variety of coffee. This coffee is largely used to blend the Arabica Coffee and in the market fetches almost the same price as that of the Arabica variety or a little less. But the Robusta coffee growers feel that in the Coffee board their interests are not properly looked into because they have practically no representation on the coffee board. The Bill seeks to provide at least four seats exclusively to Robusta coffee growers. The consumers' interests also are proposed to be represented by enabling Parliament to send two members to the coffee board as in the case of the Central Tea Board.

C. M. POONACHA.

BILL No. 4 OF 1951

A Bill further to amend the Rehabilitation Finance Administration Act, 1948.

Enacted by Parliament as follows:—

1. Short title.—This Act may be called the Rehabilitation Finance Administration (Amendment) Act, 19

2. Amendment of Section 2, Act XII of 1948.—In Section 2 of the Rehabilitation Finance Administration Act, 1948 (hereinafter referred to as the said Act) after clause (b) the following new clause be inserted, namely:—

“(bb) ‘The Chief Administrator’ means the person who shall not be a retired official or shall be on the verge of retirement but he shall be a person of age between 40 and 45;”

3. Amendment of Section 4, Act XII of 1948.—In sub-section (1) of Section 4 of the said Act,—

(i) in clause (a) the words “who shall be called the Chief Administrator” shall be omitted; and

(ii) in clause (b) for the word “four” the word “two” shall be substituted.

4. Amendment of Section 10, Act XII of 1948.—In Section 10 of the said Act,—

(i) in clause (a)—

(a) the words “a Deputy Chief Administrator and”; and

(b) the word “other” shall be omitted; and

(ii) in clause (b) the words “the Deputy Chief Administrator” shall be omitted.

5. Amendment of Section 13, Act XII of 1948.—In Section 13 of the said Act,—

(i) in sub-section (3) for the figure “6” the figures “4½” shall be substituted; and

(ii) after sub-section (3) the following new sub-section shall be inserted, namely:—

“(3A) All loan applications received from the displaced persons shall be disposed of within three months from the receipt of such applications.”

STATEMENT OF OBJECTS AND REASONS

This amending Bill is brought to improve the working of the Administration after an experience of nearly two years. At present a large number of applications are not disposed of over a period ranging from six months to 12 months with the result that the displaced persons who should enjoy the benefits granted by the Government as speedily as possible are deprived of these benefits. There are instances where the applicants having failed to get money within the shortest period possible, had either to leave the place or occupy themselves in other activities. It is essential for the expeditious disposal of such applications that the person at the head should be a person of the age between 40 and 50.

It is also proposed to amend Section 4 with majority of persons who are attached with the people, particularly displaced persons who can understand their difficulties.

It is also intended to amend Section 13(8) with the object of giving more relief to displaced persons by charging them only 4½ per cent. interest instead of 6 per cent.

R. K. SETHI

BILL No. 8 OF 1951

A Bill to provide for building up an up-to-date and comprehensive Library for Parliament.

WHEREAS it is necessary, for building up an up-to-date and comprehensive Library for the Parliament of India, to make arrangements to secure copies of every book, publication, periodical, etc., including maps, illustrations, photographs, printed, lithographed, or photographed, in any language, in any part of the Union of India;

It is hereby enacted as follows:

1. Short title, extent and commencement.—(1) This Act may be called the Parliament Library Act, 1951.

(2) It extends to the whole of India, except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the President may by order appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "Author" includes the writer, composer, compiler, annotator, commentator, or editor of a book, paper, periodical, or publication, or a cartoonist, or illustrator, draftsman, painter, and any other person whose work is included in the form of writing, annotation, compilation, editing, drawing, illustration, cartoon, map, or such like material, in a book or published separately.

(b) "Book" shall include any work in writing, paper, periodical, pamphlet, or publication, printed and published or lithographed, whether offered for sale or otherwise; and every part or division of a book, pamphlet, sheet of letter press, sheet of music, map, plan, drawing, illustration, cartoon, graph, chart, or table, separately published, but shall not include any second or subsequent edition of a book, unless such edition contains additions, annotations, or alterations, either in the letter press or in the maps, prints, or other engravings, belonging thereto, or is an abridgement of that book.

(c) "Composer" shall mean and include the author of a musical work or of musical notation, or dance choreographer.

(d) "Library" means and includes the Library attached to the Parliament of India.

(e) "Printer" means and includes the proprietor or manager of a printing press, where the copies of a book are multiplied, and who is registered as the keeper of such a printing press.

(f) "Publisher" means and includes any person, firm, or company, carrying on business as publisher of books, and declared in any book to be publisher thereof.

Explanations.—(a) If in any case there is more than one person contributing to the making of a book in its several parts of writing, commentary, or illustrations, etc., separately, the term "Author" shall mean and shall include those composing and providing the actual thought and material contained in that book, whether published or otherwise; while those who have supplied the commentary, illustration, or annotation or editing shall be distinguished from the author, by the addition of an appropriate term giving the proper designation and contribution of each such contributor.

(b) Where there is more than one person jointly concerned in writing, or providing the actual thought and material contained in a book, they shall be known as joint authors.

(c) For the purpose of this section the expression "Author", "Printer", "Publisher" and "Composer" includes the heirs, assignees or the legal representative of a deceased Author, Printer, Publisher or Composer, respectively.

(d) Where in any case the same person acts as author, printer or publisher, or combines in himself more than one of these capacities, his responsibilities under this Act shall be the same as that of all of them jointly and each severally.

3. Copies of books to be delivered to Secretary to Parliament of India.—(1) The publisher (including author or printer) of every book printed, lithographed, or photographed, and published in any State in the Union of India, shall, after this Act comes into force, furnish, at his own expense, within one calendar month of the date of such printing, lithographing, photographing or publishing, to the Secretary to Parliament of India who shall give, or cause to be given, a written receipt for the same, three copies of each such book or work printed, photographed, lithographed and published in any language, in any part of the Union of India for use in the Library.

(2) The copies so delivered under sub-section (1) to the Secretary to Parliament shall be complete copies of the entire book, including all maps, charts, graphs, tables, notes, illustrations, sketches, drawings, wood-cuts, or photogravures included therein, printed on and stitched or sewn, and bound and got up in the best paper in the same manner as the best copies of the book published:

Provided that in the case of any book of which only a number of copies have been printed on superior paper and sewn or stitched and bound in a better manner and material, whether for presentation or for sale at a price higher than that charged for the ordinary edition, the copies required to be so furnished under this section shall be of the better or superior edition.

4. Application.—Without prejudice to any rights or privileges of the Government of India or the Government of a State, the provisions of this Act shall also be applicable to any work which has been prepared or published by or under the direction or control of any Government department.

5. Penalty for offences under the Act.—If the Publisher fails to comply with the provisions of this Act, he shall be liable on summary conviction to a fine not exceeding rupees one hundred in respect of each book, or each demand by the Secretary to Parliament, in addition to the price of the copies of the book required to be furnished free of cost under this Act; and the fine shall be paid to the Secretary to Parliament of India to be kept in a separate Reserve Fund to be used for the purposes of this Act.

6. Appeal against the fine.—Any person affected by an order under section 5 may, within thirty days of the date of such order, appeal to the Court to which appeals from the Court making the order ordinarily lie; and such appellate Court may direct that execution of the order be stayed pending consideration of the appeal.

7. Court to try offences under the Act.—No Court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall try any offence against this Act.

8. Repeals.—The provisions of the Indian Copyright Act 1914 (III of 1914) and the Press and Registration of Books Act, 1867 (XXV of 1867) in so far as they relate to the transmission of copies of Books etc., to the British Museum or the Secretary of State are hereby repealed.

STATEMENT OF OBJECTS AND REASONS

The most important National Libraries of the world, such as the British Museum, the Congressional Library in the United States, or the Bibliotheque Nationale of France, are built up and kept up-to-date by requiring copies of all books etc., printed and published within the jurisdiction of the countries concerned, to be supplied free of cost to such central institutions, under the authority of some National legislation.

In the United States as well as in Britain the Copyright legislation is utilised to achieve this object.

During the British regime, the Government of India used to require under the terms of the Press and Registration of Books Act, 1867 (XXV of 1867) a certain number of copies of every book, periodical, or publication, printed and published in British India, to be supplied, free of cost, for use in the British Museum. The copies supplied for this purpose were to be of the best bound and get-up. If of a book or publication, two editions were printed, one in small number of superior paper and richer binding, for presentation, and the other more numerous on ordinary paper and with ordinary binding and get up for sale in the market, only copies from the superior edition were to be supplied under that legislation. Pains and penalties were attached in regard to failure to comply with this legislation. There is no reason why that legislation should operate now, if it is still in force.

This Bill accordingly proposes to secure, for the use of the Library of Parliament, one copy at least of every book, or publication printed in India in any Indian or foreign language. The Library of Parliament, should contain all available material for every problem that may engage

the attention of Parliament. It should in fact, be co-extensive with the problems of the entire public and private life in the country in all its aspects and phases.

K. T. SHAH.

BILL No. 11 OF 1951

A Bill further to amend the Sea Customs Act, 1878.

BE it enacted by Parliament as follows:—

1. **Short title.**—This Act may be called the Sea Customs (Amendment) Act, 19

2. **Amendment of section 87, Act VIII of 1878.**—In section 87 of the Sea Customs Act, 1878 (VIII of 1878), (hereinafter referred to as the said Act), after the word "assessed" the words "within fifteen days of such delivery" shall be inserted.

3. **Amendment of section 88, Act VIII of 1878.**—After the Second Proviso to section 88 of the said Act, the following new proviso shall be added, namely:—

"Provided further that if the owner does not clear the goods on the grounds that he disputes the correctness of the order of classification of the goods or the amount of duty levied thereon and he intimates, in writing, his intention to appeal against such order the sale of such goods shall not be proceeded with until the period of appeal has expired or in case an appeal has been filed in time, a final decision has been made thereon."

4. **Amendment of section 89, Act VIII of 1878.**—In section 89 of the said Act, for the word "may" the word "shall" shall be substituted.

5. **Amendment of section 174, Act VIII of 1878.**—In section 174 of the said Act the words "or Customs-Collector" shall be omitted.

6. **Substitution of new section for section 182, Act VIII of 1878.**—For section 182 of the said Act, the following section shall be substituted, namely:

"182. *Adjudication of confiscations and penalties.*—(1) The Central Government shall constitute at each major customs port a special tribunal consisting of a President who shall be a person qualified for appointment as a Judge of a High Court and two other members one of whom shall be a representative of a recognised commercial body in that port and the other shall be an officer nominated by the Government of India. Such Officer shall act as the Secretary to the tribunal.

(2) In every case, except the cases mentioned in sections 167, Nos. 26, 72 and 74 to 76, both inclusive, in which, under this Act, anything is liable to confiscation or to increased rates of duty,

or any person is liable to a penalty, such confiscation, increased rate of duty or penalty may be adjudged—

(a) without limit, by special tribunal constituted under sub-section (1) of this section:

(b) up to confiscation of goods not exceeding one thousand rupees in value, and imposition of penalty or increased duty not exceeding

five hundred rupees by a Deputy Commissioner or Deputy Collector of Customs, or a Customs-collector:

(c) up to confiscation of goods not exceeding two hundred and fifty rupees in value, and imposition of penalty or increased duty not exceeding one hundred rupees by an Assistant Commissioner or Assistant Collector of Customs:

Provided that every officer authorised in this section to order confiscation or levy of penalty or increased rate of duty shall pass his orders within fifteen days of the presentation of the Bill of Entry or from date of receipt of reference from the lower authority as the case may be.

7. Amendment of section 188, Act VIII of 1878.—In section 188 of the said Act,—(i) the existing provision shall be re-numbered as sub-section (1) and (ii) the following new sub-sections shall be added as sub-sections (2), (3), (4) and (5), namely:—

“(2) No decision on an appeal shall be arrived at except after hearing the appellant or a legal practitioner of his choice.

(3) A copy of the order passed by the appellate authority shall be served on the appellant, within twenty days from the date of such order.

(4) Within sixty days of the date upon which he is served with a copy of an order passed by an appellate authority, the appellant may by application accompanied by a fee of one hundred rupees require the appellate authority to refer to the High Court any question of law arising out of such order and the appellate authority shall within ninety days on receipt of such application draw statement and refer it to the High Court having jurisdiction over the port in respect of which the appeal arises.

(5) If an appellate authority refuses to state the cases on the ground that no question of law arises the appellant may within six months from the date on which he is served with the notice of refusal apply to the High Court having jurisdiction over the port in respect of which appeal arises and the High Court, if it is not satisfied of the correctness of the decision of the appellate authority may direct that appellate authority to state the case and to refer it to the High Court and on receipt of such direction the appellate authority shall state the case and refer it to the High Court accordingly.”

8. Substitution of new section for section 193, Act VIII of 1878.—For section 193 of the said Act, the following shall be substituted namely:—

“193. *Enforcement of payment of Penalty.*—When a penalty or increased rate of duty is finally adjudged against any person under this Act by any officer of Customs such officer, if such penalty or increased rate be not paid, may levy the same by sale of any goods of the said person which may be in his charge, or in the charge of any other officer of Customs.

When such an officer of Customs is unable to realise the unpaid amount thereof from such goods, such officer may notify in writing to any Magistrate within the local limits of whose jurisdiction such person or any goods belonging to him may be, the name and residence of the same person and the amount of penalty or increased rate of duty unrecovered; and such Magistrate shall thereupon proceed to enforce payment of the said amount in like manner as if such penalty or increased rate had been inflicted by himself.”

2. Amendment of section 199, Act VIII of 1878.—In section 199 of the said Act, (i) the existing provision shall be renumbered as sub-section (1) and (ii) the following new sub-section (2) shall be added namely:—

“(2) Where such wharf or authorised landing or storing place belongs to the Port Trust or a body other than the Customs, the Collector of Customs shall have power to fix generally or by special order in any particular case the commencing and ending dates for levy of wharfage or demurrage and when clearance of a consignment is delayed pending the passing of an order by Collector, Tribunal or disposal of appeal by an appellate authority, no extra wharfage or demurrage beyond the free period of storage covered by the first wharfage shall be chargeable on such goods and the Collector of Customs shall issue a certificate to this effect when applied for before or after removal of goods.”

10. Amendment of section 207, Act VIII of 1878.—To section 207 the following proviso shall be added namely:—

“Provided that the powers of ordering charge or remissions of wharfage and demurrage vested in the Collector of Customs under section 199 of this Act, shall be binding on the port authorities.”

STATEMENT OF OBJECTS AND REASONS

The present law of Sea Customs contained in the Sea Customs Act (VIII of 1878) was enacted 72 years ago and, although it has been amended in some matters as appeared expedient to Government under the British rule, it appears that the law is not suitable to the conditions existing today. Owing to the great rise in the rates of Customs duty in all the articles of imports and exports and the penalties which the Customs officers are now authorised to inflict under the Act, it is absolutely necessary that the powers vesting in the Customs Authorities should be restricted and proper provision should be made for appeals. Necessary provisions have accordingly been made in this Bill. The suggested amendments to the Sea Customs Act, 1878 are therefore considered urgently necessary.

R. K. SIDHVA.

BILL No. 25 of 1951

A Bill to provide for certain matters relating to dowry.

Enacted by Parliament as follows:—

1. Short title, extent, commencement and application.—(1) This Act may be called the Dowry Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It shall apply in the first instance, to Hindus, Buddhists, Sikhs and Jains, but the Central Government may, by notification, direct that it shall apply to members of any other community also.

2. Definitions.—In this Act, unless the context otherwise requires:—

(a) **dowry** means any property transferred or agreed to be transferred as a part of the contract of any betrothal or marriage by one party to the betrothal or marriage, or the father, mother or guardian

of that party to the other party to the marriage or to the father, mother or guardian of the other party, but does not include voluntary marriage gifts such as ornaments to a bride and dresses to a bridegroom the value of which do not exceed one thousand rupees.

(b) "marriage" means a marriage between any two persons to whom this Act applies.

3. Dowry to be held in trust for wife.—(1) Where a dowry is given after the commencement of this Act, such dowry shall be deemed to be the property of the woman in connection with whose marriage it was so given.

(2) Where a dowry is received by any person other than the woman in connection with whose marriage it was given and is not transferred by that person to the woman that person shall be deemed to hold it in trust for the benefit and separate use of that woman, and, if that woman dies before obtaining the transfer, for the benefit and separate use of her heirs as if it is *stridhana* property.

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to discourage the taking or giving of dowries. This practice has now assumed such large proportion that the parents are finding it difficult to get their daughters married and girls both educated and uneducated are averse to ideas of marriage on account of the trouble their parents are put to in finding the money for the payment of dowry.

The object of this Bill is however limited to ensuring that the dowry when given should be solely for the benefit of the bride.

It is intended by this Bill to constitute the holder of the dowry, who is generally either the bridegroom or his parents, a trustee of the dowry for the benefit of the woman so that she can always enforce her right at any moment. This Bill also intends to make her economically independent.

G. DURGABAI.

BILL No. 27 OF 1951.

A Bill to provide for restraining the taking or giving of dowry in connection with marriages and for matters incidental thereto.

BE it enacted by Parliament as follows:—

1. Short title, extent, commencement and application.—(1) This Act may be called the Dowry Restraint Act, 1951.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

(4) It shall apply in the first instance to Hindus, Buddhists, Sikhs and Jains, but the Central Government may, by notification, direct that it shall apply to members of any other community also.

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "dowry" means any property transferred or agreed to be transferred as a part of the contract of any betrothal or marriage by one party to the betrothal or marriage or the father, mother or guardian of that party to the other party to the marriage or to the father,

mother or guardian of the other party, but does not include voluntary marriage gifts such as ornaments to a bride and dresses to a bridegroom, the value of which do not exceed one thousand rupees.

(b) "marriage" means a marriage between any two persons to whom this Act applies.

3. Penalty for taking dowry.—A person who takes dowry shall on conviction be punishable with simple imprisonment which may extend to six months or with fine which may extend to the amount or value of the dowry taken or with both.

4. Penalty for giving dowry or abetment thereof.—A person who gives dowry or abets the giving of dowry shall on conviction be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both.

5. Penalty for dowry after solemnisation of marriage.—A person who at any time within three years after the solemnisation of a marriage to which this Act applies demands either directly or indirectly from the parents or any other person who was the guardian of the woman before her marriage any payment which is in the nature of a dowry, shall be deemed to have committed an offence under section 3 of this Act and shall be punishable accordingly.

6. Cognizance of offence.—No court shall take cognizance of any offence punishable under this Act except on complaint made in this behalf, provided that every such complaint shall be accompanied by a deposit of fifty rupees as security against false, vexatious or frivolous proceedings.

STATEMENT OF OBJECTS AND REASONS

The object of the Bill is to punish the taking or giving of dowries. The practice of accepting money from the parents or guardians of the bride or the bridegroom by either party has done tremendous harm to the society. Parents sometimes incur heavy debts in paying this dowry. This Bill is therefore, designed to do away with the evil practice of dowry.

JAYASHRI RAJJI.

BILL No. 28 OF 1951

A Bill further to amend the Essential Supplies (Temporary Powers) Act, 1946.

Be it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Essential Supplies (Temporary Powers) Amendment Act, 19 .

(2) It shall come into force at once.

2. Amendment of section 7, Act XXIV of 1946.—In sub-section (1) of section 7 of the Essential Supplies (Temporary Powers) Act, 1946 (hereinafter referred to as the said Act) the following shall be added at the end, namely:—

"unless for reasons to be recorded the court is of opinion that it is not necessary to direct forfeiture in respect of the whole, or as the case may be any part of the property"

3. Substitution of new section for section 9, Act XXIV of 1946.—For section 9 of the said Act, the following section shall be substituted, namely:—

"9. *Relating to Corporations.*—(1) It shall be the duty of every company and other body corporate to nominate any of its direc-

tors, managers or other officers of the company or other body corporate to be responsible for the due compliance of the orders made under section 8.

(2) In case the company fails to make nomination as required by sub-section (1) all the directors of the company shall be deemed to be responsible for the due compliance of the orders made under section 8.

(3) If the person contravening the orders made under section 8 is a company or other body corporate any person nominated under sub-section (1) shall be deemed to be guilty of such contravention unless he proves that the contravention took place without his knowledge or that he exercised due diligence to prevent such contravention."

STATEMENT OF OBJECTS AND REASONS

The provisions of law contained in section 7 of the Essential Supplies (Temporary Powers) Act, 1946 are unnecessarily restrictive of the discretion of the courts when the contravention of order under section 3 of the Act in respect of cotton textiles takes place. It may happen as it does that the person contravening the order is not the owner of goods and in such a contingency an innocent owner is unnecessarily injured by an order for forfeiture. This is not desirable and is opposed to fundamental rights of property. The ends of justice will be duly secured if the provisions relating to forfeiture of textile goods are governed by the provisions of law contained in section 7 of the Act in regard to foodstuffs.

The provisions of section 9 relating to the liability of directors, managers or secretaries or other officer or agent in regard to offences by corporations are extremely wide. There are cases in which absent directors even when business of the company is run and controlled by managing agents and practically the directors have no voice in the administration, have been challaned by police resulting in great harassment to innocent persons. It is unintelligible why the manager or secretary whose duty does not require them or place them in a position to control and prevent contravention of orders made under section 3 of the Act should normally come within the mischief of the rule enunciated in section 9 of the Act. It is more desirable that in every company a responsible officer of the company or director be nominated for complying such orders and made responsible for contravention if any and unless he proves want of knowledge or exercise due diligence he may be deemed to be guilty. The change of law, therefore, is necessary in the interest of justice and enforcement of compliance of orders made under the Act.

THAKUR DAS BHARGAVA.

BILL No. 29 OF 1951

A Bill to restrain the custom of taking or offering of dowry in marriages.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Dowry Restraint Act, 19

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force at once, on such date or dates as the Government may by notification in the official Gazette appoint.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

(a) “dowry” means anything paid in cash or kind as a part of the contract of any betrothal or marriage, by the father, mother, or guardian of a bride to a bridegroom, or to his father, mother or guardian and *vice versa*, and includes:—

(a) *Dehej*; and

(b) price of a bride, but does not include “*Stridhan*” as understood in Hindu Law and “*Mahr*” or dower as understood in Mohamedan Law.

(b) “marriage” means a contract or a ceremony for the union of a female and male under any custom or law for the time being in force.

3. Punishment for accepting dowry.—Any person who takes dowry shall on conviction be punishable with simple imprisonment which may extend to three months or with fine which may extend to the amount or value of the dowry taken or with both.

4. Penalty for giving dowry or abetment thereof.—Any person who gives dowry or abets the taking or giving of dowry shall on conviction be punishable with simple imprisonment which may extend to one month or with fine, which may extend to one thousand rupees or with both.

5. Procedure for trying offences.—An offence under section 3 or 4 of this Act shall be non-cognisable and shall be triable by a magistrate specially empowered in this behalf.

6. Security against false or vexatious proceedings.—No Court shall take cognisance of any case under this Act unless a complaint is filed and a sum of rupees fifty is deposited therewith as a security against any false or vexatious proceedings.

7. Notice to show cause.—No Court shall proceed with a complaint under this Act unless it gives the accused a chance to show cause why he should not be prosecuted under this Act.

STATEMENT OF OBJECTS AND REASONS

Among many communities in this country, there exists an evil custom of taking and offering dowry. As a result of this custom many persons have to pay exorbitant sums to secure bridegrooms for their daughters. Again, in some parts there is regular traffic of selling and buying girls. Under these circumstances, it is necessary to introduce legislation to eradicate this evil custom.

UMA NEHRU.

BILL No. 90 OF 1951

A Bill to safeguard the quality and purity of food and drugs and to provide for penalties in case of certain offences relating thereto.

Be it enacted by Parliament as follows:—

CHAPTER 1

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Food and Drugs Act, 19

(2) It extends to the whole of India, including the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires:—

(a) "food" means any article used for food or drink for any person or animal, and includes articles used as components of any such article.

(b) "drug" means any article intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in any person or animal, and includes any article (other than food) intended to affect the structure or function of the body of any person or animal, and any article intended for use as a component of the articles in the two categories aforesaid.

(c) "prescribed" means prescribed by rules made under this Act.

(d) "regulations" means the regulations made by Government under this Act.

CHAPTER 2

GENERAL PROVISIONS AS TO FOOD AND DRUGS

3. Composition of food and drugs.—(1) No person shall add, or direct or permit any other person to add,—

(a) any substance to any food so as to render the food injurious to health; or

(b) any substance to any drug so as to affect injuriously the quality or potency of the drug,

with the intent that the food or drug may be sold to the public, or administered to any person or animal in that state.

(2) No person shall sell, or have in his possession for the purpose of sale, any food or drug to which any substance has been so added.

(3) A person who contravenes any of the provisions of this section shall be guilty of an offence.

4. Offences relating to abstraction of constituents of food or drug.—

(1) No person shall abstract, or direct or permit any other person to abstract, from any food or drug any constituent thereof so as to affect injuriously the nature, substance or quality of the food or drug with intent that it may be sold in its altered state,—

(a) without notice to the purchaser of the alteration; or

(b) whether with or without such notice, if in that state the food or drug does not comply with the relevant provisions contained in regulations or rules prescribed for the composition of food or drug; and

(2) a person who contravenes any of the provisions of this section shall be guilty of an offence.

5. Offences relating to sale of food or drug to the prejudice of the purchaser.—(1) If a person sells to the prejudice of the purchaser any food or drug which is not of the nature, or of the substance, or of the quality, of the food or drug demanded by the purchaser, he shall be guilty of an offence.

(2) In proceedings under this section it shall not be a defence to allege that the purchaser bought for analysis or examination such food or drug and was not therefore prejudiced.

6. Labels.—A label must—

(a) state explicitly what substance has been added to, or what constituent has been abstracted from, the food or drug; and

(b) be of adequate size, and have the notice of addition or abstraction distinctly and legibly printed and conspicuously visible.

7. Offences relating to false labels and advertisement.—(1) A person who gives with any food or drug sold by him a label, whether attached to or printed on the wrapper or container or not, which falsely describes that food or drug, or is otherwise calculated to mislead as to its nature, substance, or quality shall be guilty of an offence,

(2) A person who publishes, or is a party to the publication of, an advertisement which falsely describes any food or drug, or is otherwise calculated to mislead as to its nature, substance or quality, shall be guilty of an offence.

8. Regulations as to food.—Government may make rules for all or any of the following purposes namely:—

(a) authorising measures to be taken for the prevention of danger to health from the importation, preparation, transport, storage, exposure for sale, and delivery of food of various kinds intended for sale or having been sold for human consumption,

(b) requiring wrappers or containers enclosing or containing food of various kinds to be labelled or marked in accordance with the rules,

(c) prohibiting or restricting the addition of any substance to, and regulating generally the composition of, any food.

9. Offences relating to the sale etc. of the unsound food.—(1) A person who—

(a) sells, or offers, or exposes for sale, or has in his possession, for the purpose of sale or of preparation for sale; or

(b) deposits with, or consigns to any person for the purpose of sale or of preparation for sale, any food intended for, but unfit for human consumption, shall be guilty of an offence.

(2) Where food in respect of which an offence under clause (a) of sub-section (1) has been committed was sold to the offender by some other person, that person also shall be guilty of an offence.

10. Examination of food or drug by officers appointed by Central or State Governments.—(1) Any officer, authorised by the Central or State Government may at any time examine any food or drug intended for human or animal consumption which has been sold, or is offered, or exposed for sale, or is in the possession of, or has been deposited with or consigned to, any person for the purpose of sale or of preparation for sale, and, if it appears to him to be unfit for human or animal consumption, may seize it and remove it in order to have it examined, and the person concerned proceeded against.

(2) An officer who seizes any food or drug under sub-section (1) shall inform the person in whose possession it was found, of his intention to have it and him dealt with, and any person who under section 9 may be liable to a prosecution in respect of the food or drug shall be entitled to be heard and to adduce evidence.

(3) If it is proved that any food or drug thus seized under this section is unfit for human consumption, it shall be condemned and destroyed, or be so disposed of as to prevent it from being used for human or animal consumption.

(4) If the food seized is not so condemned, it shall be returned to the person concerned and the authority shall compensate the owner of the food or drug for any depreciation in its value resulting from its seizure and removal.

CHAPTER 3

MILK AND MILK PRODUCTS

11. Powers of Government to make regulations.—(1) Government may make regulations for determining what deficiency in any of the normal constituents of milk, or what proportion of water, in a sample shall for the purposes of this Act raise a presumption, until the contrary is proved, that the article sampled is not genuine milk.

(2) Regulations made under this section shall be laid before Parliament as soon as may be after they are made.

12. Offences relating to adulteration and sale of adulterated milks.—

(1) No person shall—

(a) add any water or colouring matter, or any dried or condensed milk or liquid reconstituted therefrom, to milk or *dahi* (curd) or *lassi* intended for human consumption; or

(b) sell, or offer, or expose for sale, or have in his possession for the purpose of sale, for human consumption any milk or *dahi* or *lassi* to which any addition has been made in contravention of the provisions of this sub-section.

(2) A person who contravenes any of the provisions of this section shall be guilty of an offence.

13. Offences relating to adulteration of butter, ghee and false advertising.—(1) A person who sells, or offers, or exposes for sale, or has in his possession for the purpose of sale—

(a) butter which contains in it any animal fat or other adulterant;

or

(b) ghee which is not wholly clarified butter but contains in it "*vanaspathi*", animal fat or other adulterant, shall be guilty of an offence.

(2) A person who publishes or is a party to the publication of an advertisement describing adulterated butter or ghee as pure butter or ghee shall be so guilty of an offence.

14. Seizure of adulterants and other offences thereto.—If any substance intended to be used for the adulteration of butter or ghee is found in a dairy or shop which deals only in such foods, the owner and occupier of the dairy or shop shall be guilty of an offence, and, if any oil or fat capable of being so used is found in such a place, it shall be presumed to be intended for such use, unless the contrary is proved.

CHAPTER 4

DRUGS

15. Adulteration of drugs.—A drug shall be deemed to be adulterated—

(a) if it consists in whole or in part of any filthy, putrid, or decomposed substance, if it has been prepared packed or held under insanitary conditions whereby it may have been contaminated with

filth, or whereby it may have been rendered injurious to health; or, if it is a drug, and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(b) if it purports to be or is represented as a drug, the name of which is recognised in official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium;

(c) if it is not subject to the provisions of clause (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; and

(d) if any substance has been mixed or packed therewith so as to reduce its quality or strength or substituted wholly or in part therefor.

16. Offences relating to the adulteration of drugs.—A person who adulterates a drug, or who sells, offers or exposes for sale, such adulterated or misbranded drug shall be guilty of an offence.

CHAPTER 5

ADMINISTRATION

17. Duty of the Central and State Governments.—It shall be the duty of the Central Government, and of every State Government to carry into execution within their area and to enforce the provisions of this Act with a view to securing that food and drugs are sold only in a pure and genuine condition.

18. Appointment of public analysts and regulations prescribing their qualifications.—(1) Every Government shall appoint in accordance with the provisions of this Act one or more persons, designated as "public analysts" to be analysts of food and drugs within their area.

(2) No person shall be appointed a public analyst unless he possesses either the prescribed qualifications or such other qualifications as Government may approve, and no person shall be appointed public analyst for any area who is engaged directly or indirectly in any trade or business connected with the sale of food or drugs in that area.

(3) A public analyst shall be paid such remuneration as may be fixed by Government.

(4) Regulations prescribing qualifications for the purpose of sub-section (2) of this section shall be laid before Parliament as soon as may be after they are made.

19. "Sampling officer".—(1) An authorised officer of the Central or State Government, may exercise such powers of procuring samples of food and drugs for analysis, or for bacteriological or other examination as are conferred upon him under this Act, and any such officer shall be referred to in this Act as a "sampling officer".

(2) The sampling officer may purchase or take samples of any food or drug, or any substance capable of being used in the preparation of food or drug, found on premises which he has entered in the execution of his duties under this Act.

20. Duties of the "sampling officer".—(1) If a sampling officer who has procured a sample of any food or drug considers that it should be analysed, he shall submit it to be analysed by the public analyst for the area in which the sample was procured.

(2) A person, other than a sampling officer, who has purchased any food or drug may submit a sample of it to be analyzed by the public analyst for the area in which the purchase was made.

(3) The public analyst shall analyse as soon as practicable any sample sent to him in pursuance of this section, and give to the person by whom it was submitted a certificate in the prescribed form specifying the result of the analysis; provided that, in the case of a sample, submitted by a person other than a sampling officer, the public analyst may demand in advance such fee as may be prescribed.

21. Submission of reports by public analysts to government.—(1) Every public analyst shall, at the end of every quarter, report to the authority by whom he was appointed the number of articles which have been analysed by him under this Act in his capacity of public analyst during the preceding quarter and the result of each analysis.

(2) Every State Government shall transmit to the Centre at such time as may be prescribed, a copy of each quarterly report received by them from every public analyst.

(3) The aforesaid reports together with the reports from public analysts appointed by the Central Government shall be laid before Parliament at least once in every six months.

22. Offences relating to obstruction to any person in the execution of the Act.—A person who wilfully obstructs any person acting in the execution of this Act or of any regulation, order, or warrant made or issued thereunder shall be guilty of an offence.

CHAPTER 6

PENALTIES

23. Punishment of offences under the Act.—A person guilty of an offence under this Act shall be punishable with imprisonment for a term not exceeding two years, or with a fine not exceeding rupees one thousand, or with both.

24. Proceedings and Procedure under the Act.—(1) In any proceedings under this Act, the production by one of the parties of a document purporting to be a certificate of a public analyst in the prescribed form, or of a document supplied to him by the other party as being a copy of such a certificate, shall be sufficient of the facts stated therein, unless, in the first mentioned case, the other party requires that the analyst shall be called as a witness.

(2) The court before which any proceedings are taken under this Act may, if it thinks fit, and upon the request of either party, shall, cause the part of any sample produced before the Court to be sent to the Government chemist, who shall make an analysis, and transmit to the Court a certificate of the result thereof, and the costs of the analysis shall be paid by the prosecutor or the defendant as the Court may order.

(3) If, in a case, where an appeal is brought no action has been taken under sub-section (2), the provisions thereof shall apply also in relation to the Court by which the appeal is heard.

25. Offences relating to wrong application of a certificate.—A defendant who in any proceedings under this Act wilfully applies to any food or drug a certificate of analysis given in relation to any other food or drug shall be guilty of an offence.

CHAPTER 7

MISCELLANEOUS

26. Powers of the Central Government to make regulations in respect of certain matters.—Without prejudice to the generality of the provisions under which they are made, the Central Government may make regulations,—

(a) to provide for the taking and examination of samples;

(b) to authorise the making of charges for the purposes of the regulations or for any services, performed thereunder, and to provide for the recovery of charges so made;

(c) to make such ancillary and incidental provisions as appear to Government to be necessary or desirable.

STATEMENT OF OBJECTS AND REASONS

The adulteration of food-stuffs and drugs is fast developing into a menace to the health of the nation. In fact it is becoming so common that the majority of people even appear rather indifferent to the problem and its serious consequences. A suitable Central enactment, embracing both food and drugs, has thus become a vital necessity. The Bill seeks to fulfil this purpose in a large measure and contains in it several features which distinguish similar legislation in the United Kingdom and the United States of America, countries which have registered a remarkable advance in this direction.

H. V. KAMATH.

BILL No. 81 OF 1951

A Bill further to amend the Insurance Act, 1938

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Insurance (Amendment) Act, 1951.

(2) It shall come into force at once.

2. Amendment of section 28, Act IV of 1938.—In section 28 of the Insurance Act, 1938 (hereinafter referred to as the said Act),—

(i) in sub-section (2) the following shall be added at the end, namely:—

“The forms of returns referred to in sub-section (1) and this sub-section will be prescribed by Government”; and

(ii) after sub-section (5) the following new sub-section (6) shall be added, namely:—

“(6) The forms of returns shall be so proscribed that they will also show the investments made out of the controlled fund referred to in section 27A, with the necessary classifications and details.”

3. Omission of section 28A, Act IV of 1938.—Section 28A of the said Act shall be omitted.

4. Amendment of section 29, Act IV of 1938.—In section 29 of the said Act,—

(i) the *Explanation* to sub-section (3) shall be omitted;

(ii) in sub-section (4) for the words "within one year from such commencement" the following shall be substituted, namely:—

"within such time as is prescribed in an agreement recording a mutually settled arrangement for its repayment, such arrangement being arrived at with the consent of all the Directors present at a meeting and eligible to vote. In case no such agreement is arrived at, the same shall be repaid within five years from such commencement"; and

(iii) in sub-section (6)—

(a) for the words "the insurer" the words "any insurer" shall be substituted; and

(b) the words,—

(i) "granting the loan"; and

(ii) "of one year or three months, as the case may be" shall be omitted.

5. Omission of section 31A, Act IV of 1938.—Section 31A of the said Act shall be omitted.

6. Omission of section 32A, Act IV of 1938.—Section 32A of the said Act shall be omitted.

7. Amendment of section 40A, Act IV of 1938.—In section 40A, of the said Act,—

(i) in clause (c) of sub-section (2) after the words "first year's premium" the words "and one per cent. on each renewal premium" shall be inserted.

(ii) after sub-section (2) the following new sub-section (2A) shall be inserted, namely:—

"(2A) No Insurer shall pay or contract to pay to a Chief Agent and no Chief Agent shall receive or contract to receive by way of commission or remuneration in any form in respect of any policy of Life Insurance issued in India by an Insurer after the 31st December 1950, and effected through a Chief Agent an amount exceeding—

(a) where the policy grants an immediate annuity or a deferred annuity in consideration of a single premium, or where only one premium is payable on the policy, one per cent of that premium;

(b) where the policy grants a deferred annuity in consideration of more than one premium, four and a half per cent of the first year's premium, and one per cent of each renewal premium, payable on the policy; and

(c) in any other case, thirty per cent of the first year's premium and two and a half per cent of each renewal premium, payable on the policy:

Provided that in a case referred to in clause (c), an Insurer, during the first ten years of his business, may pay to a Chief Agent and a Chief Agent may receive from such an Insurer, thirty two and half per cent of the first year's premium payable on the policy."

8. Amendment of section 44, Act IV of 1938.—In clause (b) of the proviso to sub-section (44) of the said Act, after the words "at least five years",—

(i) the words "after his ceasing to act as such agent he does not directly or indirectly solicit or procure insurance business for any other Insurer, and that" shall be inserted; and

(ii) the word "and" shall be omitted.

9. Amendment of the Sixth Schedule, Act IV of 1938.—In the Sixth Schedule to the said Act, in Part C, (i) for paragraph 2, the following shall be substituted, namely:—

"2. The special agent shall employ and keep employed at least five insurance agents and shall cause to be procured through insurance agents employed under him in each calendar year organized and completed new business amounting to not less than fifty thousand rupees assured."; and

(ii) in paragraph 8 for the word "fifty" the words "thirty-three and one-third", shall be substituted.

STATEMENT OF OBJECTS AND REASONS

The following notes on Clauses indicate clearly the objects and reasons for the amendments proposed in this Bill:—

Clause 2.—Multiplicity and duplication of returns is not desirable. A form can easily be prescribed so as to exhibit in one form all the information required for the purposes of sections 27 and 27A.

Clause 4.—Grants of advances to new agents and new special agents are unnecessary and inconsistent with the whole conception underlying the limitation of advances.

The period of one year allowed at present is too short and insures non-recovery rather than aiding or inducing recovery. The Act should aim at making actual and substantial recovery possible.

It is but proper that a person who makes a default should be prohibited from working for any Insurer. Otherwise there will be obvious anomalies and difficulties, in case the defaulter is allowed, after the default, to work with another Insurer.

Clauses 5 and 6.—These new provisions will act as a deterrent to capable persons throwing their full weight into the expansion of business, and will act as unnecessary restrictions on the activities of persons of high and varied ability.

Clause 7.—Non-limitation of the expenditure on commission in the solitary case of the Chief Agency appears to be a grave omission in the Act. There is no reason why the principle of limitation of expenses which the Act extends to all and sundry is kept in abeyance with regard to the single category of the Chief Agent. The rates suggested are the average rates obtaining in India at present.

The Special Agency method of organization is a comparatively cheap method most suitable in the present condition of the business. It is calculated to extend and popularise life Insurance speedily. Hence the special agency contract must be made attractive and remunerative. It must offer benefits of semi-permanent income to a person so that he will stick to the business as well as the Insurer. Hence the suggestion to provide for Renewal commission.

Clause 8.—It is not sound policy to provide for continuance of commission even in case of a person who joins another Insurer. This will exert a dissipative force amongst the workers of an Insurer. A smaller number of years is prescribed in Clause (b) of the Proviso to section 44(1) as a condition of continuous service period in view of the smaller percentage provided in that case.

Clause 9.—The special agent should be judged on his organized work only. His personal work need not be taken into account when judging his eligibility to commission. He must employ and keep employed a sizable number of agents. Two is too small a number. The existing condition as to receipt of full year's premium is too harsh and repels intending workers. Such a condition is not imposed elsewhere in the Act where minimum qualifying business is laid down, e.g. in Part B of this Schedule which applies to Chief Agents.

P. S. DESHMUKH.

BILL No. 84 OF 1951

A Bill to provide for the constitution and incorporation of Bar Councils for High Courts and an All India Bar Council for the Supreme Court.

BE it enacted by Parliament as follows :—

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the All India Bar Councils Act, 19

(2) It extends to the whole of India and shall apply to the High Courts of Judicature at Fort William in Bengal, and at Madras, Bombay, Nagpur, Patna, Orissr, Punjab, and to such other High Courts within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, as the State Government may and by notification in the Official Gazette declare to be High Court to which this Act applies.

(3) This section and sections 2, 26, 27 and 28 shall come into force at once, and the State Government may, by notification in the Official Gazette, direct that the other provisions of this Act, or any provision thereof specified in the notification, shall come into force in respect of any High Court to which this Act applies on such date as it may by the notification appoint.

2. Interpretation.—In this Act, unless there is anything repugnant in the subject or context,—

- (a) "Advocate" means an advocate entered in the roll of advocates of the Supreme Court or of a High Court under the provisions of this Act.
- (b) "Advocate-General" unless otherwise stated expressly or by implication, when there is no Advocate-General, the Government Advocate and, where there is no Advocate-General or Government Advocate, such officer as the State Government may declare to be the Advocate-General for the purposes of this Act ;
- (c) "Court" includes all courts civil, criminal and revenue Courts established within the Union of India or by a State Government ;
- (d) "Tout" means a person—
 - (i) who procures in consideration of any remuneration moving from any practitioner, the employment of the legal practitioner in any legal business ; or
 - (ii) who proposes to any legal practitioner or to any person interested in any legal business to procure, in consideration of any remuneration moving from either of them, the employment of the legal practitioner in such business ; or
 - (iii) who for the purpose of such procurement frequents the precincts of civil or criminal Courts, or of revenue offices, landing stages, lodging places or other places of public resort.

CONSTITUTION OF BAR COUNCILS

3. Constitution and Incorporation of Bar Councils.—(1) For the Supreme Court a Bar Council shall be constituted in the manner hereinafter provided and shall be called the All India Bar Council.

(2) For every High Court a Bar Council shall be constituted in the manner hereinafter provided.

(3) The All India Bar Council and the every Bar Council of an High Court so constituted, shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property, both movable and immovable, and to contract, and shall by the name "All India Bar Council" or by name of the Bar Council of the High Court for which it has been constituted, as the case may be, sue and be sued.

4. Composition of High Court Bar Councils.—(1) The High Court Bar Council shall consist of the following members, namely:—

(a) the Advocate-General;

(b) ten members to be elected from the advocates practising in the districts in the following manner—

ten electoral units each comprising of a number of districts shall be constituted as single-member constituencies by the Bar Council, if there is one, otherwise by the High Court concerned, on a population basis. One member from each of the said constituencies shall be elected to the Bar Council;

(c) five members to be elected by the advocates practising in the High Court;

Provided that in case the Bench of the High Court usually sits at more than one place, the Bar Council or the High Court, in case there is no Bar Council, shall by rules made in that behalf allocate the number of members to be elected from each of such places;

(d) three members to be nominated from amongst the advocates by the High Court; and

(e) four members to be co-opted by the members mentioned in clauses (a), (b), (c) and (d) of this sub-section from amongst the judges of the High Court who had been advocates:

Provided that no advocate shall be eligible for membership who has not for less than ten years been entitled as of right to practise in the High Court.

(2) There shall be a Chairman and a Vice-Chairman of each Bar Council. In States where there is an Advocate-General, he shall be the *ex-officio* Chairman, while the Vice-Chairman shall be elected by the Bar Council in such a manner as may be prescribed:

Provided that in States where there is no Advocate-General the Chairman of the Bar Council shall be elected by the Council in such a manner as may be prescribed.

5. Term of Membership of the High Court Bar Councils.—(1) The term of office of Advocate-General as a member of the Bar Council shall be till he holds that post.

(2) The term of office of members of the Bar Council mentioned in clauses (b), (c) and (d) of sub-section (1) of section 4 shall be nine years:

Provided that upon the first constitution of the Bar Council under this Act, the Chairman shall make such provision that one-third of the members holding seats shall retire every third year.

(3) The term of office of members co-opted under clause (e) of sub-section (1) of section 4 shall be five years or for the period they hold the office of a judge of the High Court, whichever is less.

(4) The seats falling vacant by death or retirement shall be filled in by election, nomination or co-option as the case may be from the members of the same class for the unexpired term :

Provided that the members who retire shall be eligible for re-election :

Provided further that the existence of a vacancy or vacancies at any time shall not invalidate the constitution of the Bar Council.

6. Composition of All India Bar Council—(1) The All India Bar Council shall consist of the following members, namely :—

- (a) the Attorney-General ;
- (b) five members to be elected by the advocates practising in the Supreme Court ;
- (c) two members from each of the Bar Councils of the High Courts elected by the members of those Bar Councils :

Provided that it will not be necessary that the members so elected are the members of the Bar Council also ; and

- (d) two members to be co-opted by the members mentioned in clauses (a), (b), and (c) from amongst the Judges of the Supreme Court, who had been advocates.

(2) There shall be a Chairman and a Vice-Chairman of All India Bar Council, and shall be elected by the Council in such a manner as shall be prescribed.

7. Term of Membership of All India Bar Council—(1) The term of office of Attorney-General as a member shall be till he holds that post.

(2) The term of office of the members elected under clauses (b) and (c) of sub-section (1) of section 6 shall be nine years :

Provided that upon the first constitution of the All India Bar Council under this Act, the Chairman shall make such provision that about one-third of the members holding seats shall retire every three years.

(3) The term of office of members co-opted under clause (d) of sub-section (1) of section 6 shall be five years or for the period they hold office of the Judge of the Supreme Court whichever is less.

(4) The seats falling vacant by death or retirement shall be filled by election or co-option from the same class for the unexpired term :

Provided that the members who retire shall be eligible for re-election :

Provided further that the existence of a vacancy or vacancies at any time shall not invalidate the constitution of the Bar Council.

8. Power to make rules regarding Constitution and procedure of Bar Councils.—(1) Rules consistent with this Act, may be made to provide for the following matters namely :—

- (a) the manner in which election of members of Bar Council shall be held ; the manner in which the result of the elections shall be published ; and the manner in which and the authority by which doubts and disputes as to the validity of an election shall be finally decided ;
- (b) the filling of casual vacancies in the Council ;
- (c) the convening of the meetings of the Council ; and the quorum necessary for the transaction of the business thereat ;
- (d) the manner of election and the respective terms of office of the Chairman, in cases where the Chairman is to be elected and of the Vice-Chairman ; and
- (e) any other matter incidental or ancillary to the foregoing matters.

(2) In places where no Bar Council exists at the time of the coming in force of this Act, the first rules under this Act shall be made by the High Court, but the Bar Council may thereafter, add to, amend or rescind any rules so made.

(3) The first rules for the All India Bar Council under this section shall be made by the Supreme Court but the All India Bar Council may thereafter add to, amend or rescind any rules so made.

(4) No election of a member or members of the Council shall be called in question on the ground that the notice thereof has not been given to any person entitled to vote thereat, if notice of the date fixed for the election has, not less than thirty days before that date, been published in the official Gazette of the Central Government in the case of the All India Bar Council or of the State or each State in which the High Court exercises Jurisdiction, as the case may be, in case of Bar Council of the High Courts.

9. Power of the Bar Councils to make Bye-laws.—The Bar Council may make bye-laws consistent with this Act and any rule made thereunder to provide for any of the following matters, namely :—

- (a) the appointment of such ministerial officers and servants as the Bar Council may deem necessary and the pay and allowances and other conditions of service of such officers and servants ;
- (b) the appointment and constitution of Committees of the Council, the procedure of such Committees, and the determination of the powers and duties of the Council which may be delegated to such Committees ;
- (c) the appointment and constitution of committees for the purpose of supervising legal education ; and
- (d) the appointment and constitution of the District Bar Council Committees and their powers and duties :

Provided that the bye-laws respecting clauses (a), (b) and (c) relating to All India Bar Council shall be made by that Council.

ADMISSION AND ENROLMENT OF ADVOCATES

10. Admission and Enrolment of Advocates.—(1) No person shall be entitled as of right to practise in any High Court unless his name is entered in the roll of Advocates of the High Court maintained under this Act.

(2) The High Court shall prepare and maintain a roll of advocates of the High Court in which shall be entered the names of—

- (a) All persons who were, as advocates, vakils or pleaders, entitled as of right to practise in High Courts immediately before the date on which this section comes into force in respect thereof :

Provided that such person shall have paid in respect of the enrolment the stamp duty, if any, chargeable under the Stamp Act, and fees payable to the Bar Council, which shall be ten rupees ;

- (b) all other persons who have been admitted to be advocates of the High Court under this Act :

Provided that they either paid a sum of one hundred rupees to the High Court and five hundred rupees to the Bar Council ; or undertake to pay and pay a sum of twenty-five rupees per annum to the Bar Council :

Provided further that in case of persons paying annual fees, a certificate shall be issued annually entitling them to practise and they shall have a right to pay the prescribed amount in a lump sum to the High Court and the Bar Council, any time, during the course of their practice and the liability for payment of annual fees shall cease thereafter :

Provided further that every advocate shall have to pay a fee of five rupees per annum to the Bar Council.

(3) Entries in the roll of advocates shall be made in the order of seniority and such seniority shall be determined as follows, namely :—

- (a) all such persons as are referred to in clause (a) of sub-section (2) shall be entered first in the order in which they were respectively entitled to seniority immediately before the date on which this section comes into force in respect of the High Court ; and

- (b) the seniority of any other person admitted to be an Advocate of the High Court under this Act after that date shall be determined by the date of admission :

Provided that, for the purpose of clause (b), the seniority of a person who before his admission to be an advocate was entitled as of right to practise in another High Court shall be determined by the date on which he became so entitled :

Provided further that the seniority of any person admitted to be an Advocate of the High Court after the commencement of this Act, shall be determined by the date of his admission.

(4) The respective rights of pre-audience of advocates of the High Court shall be determined by seniority :

Provided that the Advocate-General shall have pre-audience over all other advocates and the Attorney General shall have pre-audience over advocates including the Advocate General :

Provided further that the advocates who have paid enrolment fees in a lump sum shall have precedence over advocates who pay annual fees.

(5) The High Court shall issue a certificate of enrolment to every person enrolled under this section mentioning therein the terms of enrolment.

(6) The High Court shall send to the Bar Council a copy of the roll as prepared under this section and shall thereafter communicate to the Bar Council all alterations in and additions to the roll as soon as the same have been made.

(7) The Bar Council shall enter in the copy of the roll all alterations and additions so communicated to it.

(8) An Advocate enrolled on payment of annual fees shall not be entitled to practise unless he has paid the annual fee in advance, and has obtained a certificate for the current year. In case such an Advocate continues to practise without a certificate, he shall be liable to pay a fine which may extend to three hundred rupees.

(9) The annual fee of five rupees shall be payable to the Bar Council in advance during the course of enrolment and practice, and in case an advocate fails to pay it consecutively for a period of two years, he shall be liable to pay a fine of twenty rupees in addition to the arrears aforesaid.

11. Enrolment of Advocates in Supreme Court.—(1) No person shall be entitled as of right to practise in the Supreme Court unless his name is entered in the roll of advocates of Supreme Court maintained under this Act.

(2) The Supreme Court shall prepare and maintain a roll of advocates which shall be in two parts, one containing the names of senior advocates, and the other containing the names of other advocates.

(3) In the first part shall be entered as the name of —

(a) all persons who are entitled to practise as senior advocates on the date on which this section comes into force in respect thereof :

Provided that such persons have paid a fee of fifty rupees to the All India Bar Council ;

(b) all persons who have been enrolled for not less than ten years as advocates in the High Court of a State :

Provided that they have paid a fee of two hundred rupees to the Court and a fee of four hundred rupees to the All India Bar Council.

(4) In the second part shall be entered the names of —

(a) all persons who are entitled to practise as an advocate on the date on which this section comes into force in respect thereof :

Provided that such persons shall have paid a fee of thirty rupees to the All India Bar Council ;

(b) all persons who have been enrolled for not less than five years as an advocate to the High Court of a State :

Provided that such persons shall have paid a fee of one hundred rupees to the Supreme Court and a fee of two hundred rupees to the All India Bar Council.

(5) All Advocates enrolled in the Supreme Court shall have to pay a fee of ten rupees per annum to the All India Bar Council.

(6) A person who in the case of an appeal before the Supreme Court has appeared as a Council Advocate or Vakil in that case in the court from which the appeal is brought shall be entitled to appear and plead in the appeal, notwithstanding that he has not been enrolled as an advocate of the court provided that an advocate of the Supreme Court is briefed with him.

(7) The Chief Justice of India may, if for any reason he thinks it desirable so to do, permit any other person who in his opinion is sufficiently qualified to appear as an advocate in a particular case.

(8) A senior advocate shall not appear or plead without a junior.

(9) No person shall appear as an advocate in any case, unless he is instructed by an agent.

(10) A senior advocate shall not accept instructions to draw pleadings, affidavits, advice on evidence or to do any drafting work of an analogous kind, but this prohibition shall not extend to settling any such matters as aforesaid in consultation with a junior.

(11) An enrolled advocate may, if otherwise qualified, apply to be enrolled in the list of senior advocates and any fees payable by him on enrolment shall be reduced by the amount of the fee paid by him on his original enrolment.

(12) A junior appearing with a senior advocate or with any other advocate senior to himself shall be entitled to, and shall be paid, a fee not less than one-third of the fee marked on the brief of the senior, but this rule shall not apply in the case of a second junior.

Explanation.—For purposes of clause (b) of sub-section (3) and clause (b) of sub-section (4), the period during which a person was entitled as of right to practise as a vakil or pleader in the High Court of a State immediately before his enrolment as an advocate in that High Court may be taken into account for the purpose of calculating the above-mentioned periods of ten or five years as the case may be.

(13) The annual fees of ten rupees shall be payable to the All India Bar Council in advance during the course of enrolment and practice, and in case an Advocate fails to pay it consecutively for a period of two years, he shall be liable to pay a fine of thirty rupees in addition to the arrears aforesaid.

12. Precedence in Supreme Court.—(1) The Attorney-General shall have precedence over all other advocates in that Court.

(2) The Advocates-General of West Bengal, Madras, Bombay, Uttar Pradesh, Punjab, Madhya Bharat, Berar, Assam, Orissa and Rajasthan shall in that order have precedence immediately after the Attorney General.

(3) An Advocate-General shall by virtue of his office have the status and precedence of a senior advocate in the Supreme Court notwithstanding that his name is not in the list of senior advocates.

(4) A senior advocate shall have precedence over other advocates.

(5) Subject to the preceding provisions, an advocate appearing before the Supreme Court shall have precedence among senior or other advocates, as the case may be, according to the date of his enrolment as a senior or other advocate, as the case may be, in the Supreme Court :

Provided that an advocate enrolled before the thirty first day of December, 1938, shall have precedence among the senior or other advocates as the case may be, according to the date of enrolment in his own High Court ; any question which arises with respect to the precedence of any advocate shall be determined by the Supreme Court.

13. Qualifications and admission of advocates.—(1) The Bar Council may make rules to regulate the admission of persons to be advocates of the High Court :

Provided that such rules shall not limit or in any way affect the power of the High Court to refuse admission to any person.

(2) In particular and without prejudice to the generality of the foregoing power, such rules shall provide for the following matters, namely:—

(a) the qualifications to be possessed by persons applying for admission as advocates;

- (b) the form and manner in which applications shall be made to the High Court for admission;
- (c) the giving of notice by the High Court to the Bar Council of all such applications;
- (d) the hearing of the High Court of any objection preferred on behalf of the Bar Council to the admission of any applicant; and
- (e) the charging of fees payable to the Bar Council in respect of the enrolment.

(3) Rules for the purpose mentioned in sub-sections (1) and (2) for admission to practise in the Supreme Court shall be made by the All India Bar Council.

(4) Rules made under this section shall provide that no woman shall be disqualified for admission to be an advocate by reason only of her sex.

MISCONDUCT

14. Professional Misconduct—An advocate shall be guilty of professional misconduct—

- (a) if he takes instructions in any case except from the party on whose behalf he is retained, or some person who is the recognised agent of such party within the meaning of the Code of Civil Procedure, or some servant, relative or friend authorised by the party to give such instructions; or
- (b) if he is guilty of fraudulent or grossly improper conduct in the discharge of professional duty; or
- (c) if he tenders, gives, or consents to the retention out of any fees paid or payable to him for his services, of any gratification for procuring or having procured the employment in any legal business of himself or any other advocate; or
- (d) if he directly or indirectly, procures or attempts to procure the employment of himself as such advocate through, or by the intervention of, any person to whom any remuneration for obtaining such employment has been given by him, or agreed to or promised to be so given; or
- (e) who accepts any employment in any legal business through a person who has been proclaimed as a tout; or
- (f) if he is guilty of any other act grossly derogatory to the profession.

15. Punishment of Advocate for Misconduct.—(1) The Bar Council may, in the manner hereinafter provided reprimand, suspend or remove from practice any advocate whom it finds guilty of professional or any other misconduct which in its opinion renders him unfit to be an advocate.

(2) Upon receipt of a complaint made to it by the High Court or by any Court or by any other persons that such advocate has been guilty of misconduct, the Bar Council shall, unless it considers unnecessary to do so, refer the case for enquiry, either to the Court of the District Judge (hereinafter referred to as District Court) or to a district committee of the Bar Council or to a sub-committee of its own members, constituted for the purpose, to make a preliminary enquiry and make a report about it to the Bar Council.

(3) The finding of the District Court or a district committee of the Bar Council or of the sub-committee of the Bar Council as the case may be, shall be sent to the Bar Council.

(4) If on the receipt of the report under sub-section (3) or even if without such reference and report the Bar Council is of opinion that the case should be tried, it shall be enquired into by a committee of the Bar Council (hereinafter referred to as the Tribunal).

(5) The Tribunal shall consist of not less than three and not more than five members of the Bar Council, appointed for the purpose of the inquiry by the Chairman of the Bar Council and one of the members so appointed shall be appointed to be the President of the Tribunal.

(6) After the appointment of the Tribunal, the complaint and the report of the inquiry, if any, shall be sent to the Tribunal. The Tribunal on receipt of such inquiry or report shall fix a day for the hearing of the case and shall cause notice of the day so fixed to be given to the advocate concerned, to the Registrar of the High Court and to the complainant, if any, and shall afford the advocate concerned and the complainant, if any, an opportunity of being heard and of producing such material before it as they desire;

Provided that the Tribunal shall not be bound by any rules of evidence.

(7) In case of a private complaint the Tribunal may if it considers, necessary, call upon the complainant to furnish such security for costs as it deems fit.

(8) On the termination of the inquiry the Tribunal shall pass orders in the case. In passing its orders the Tribunal may pass such orders as regards the payment of costs of the inquiry and of the hearing before it as it thinks fit.

16. Appeal.—(1) From the orders of the Tribunal an appeal shall lie to the All India Bar Council.

(2) The period of limitation for the appeal shall be thirty days.

(3) On receipt of an appeal the All India Bar Council shall constitute a sub-committee of its own members consisting of not less than three and not more than five members, and shall nominate one of the members as the President (hereinafter referred to as Appellate Tribunal).

(4) The Appellate Tribunal after giving notice to the Secretary of the Bar Council and the advocate concerned and the complainant, if any, shall fix a date of hearing of the appeal.

(5) At the time of the hearing of the appeal, the Secretary of the Bar Council concerned or any other person appointed by the Bar Council for this purpose and the complainant, if any, and the advocate concerned, shall have the right of appearing before the committee.

(6) The Appellate Tribunal after hearing the appeal will pass order in the case and the opinion of the majority of members shall prevail.

17. Execution of the order.—(1) The order of the Tribunal, in case no appeal is filed, or the order passed by the Tribunal is confirmed by the Appellate Tribunal, or the order of the Appellate Tribunal in case it varies with the order of the Tribunal shall be final.

(2) A copy of the orders of a Tribunal or of the Appellate Tribunal as the case may be, shall thereafter be submitted to the High Court, when any advocate reprimanded or suspended by such orders a record of the punishment shall be entered against his name in the roll of advocates of the High Court and when an advocate is removed from practice his name shall forthwith be struck off the roll, and the certificate of the advocate so suspended or removed shall be recalled.

(3) The Bar Council shall make rules to prescribe the procedure to be followed by the District Bar Council Committees, sub-committee of the Bar Council and the Tribunal in the conduct of the inquiries referred under this

section and the All India Bar Council for the procedure to be adopted by the Appellate Tribunal appointed for hearing the appeal.

18. Powers of the All India Bar Council in case of misconduct.—All India Bar Council shall have the same powers and adopt the same procedure in respect of complaints of misconduct in respect of advocates practising before the Supreme Court as are exercisable by the Bar Councils in respect of advocates practising in the High Courts under section 13 of the Act, but the State Bar Council shall not be debarred from taking proceedings for misconduct by an advocate enrolled in Supreme Court committed within its jurisdiction.

19. Finality of orders of the Tribunal of All India Bar Council.—(1) The orders of a Tribunal of the All India Bar Council passed under section 18 of this Act shall be final.

(2) A copy of the orders of the Tribunal of the All India Bar Council shall be submitted to the Supreme Court. When any advocate is reprimanded or suspended by the Tribunal of the All India Bar Council a record of the punishment shall be entered against his name in the rolls of the advocates of the Supreme Court, and when an advocate is removed from practice his name shall forthwith be struck off the rolls, and the certificate of the advocate so suspended, shall be recalled.

(3) The All India Bar Council shall make rules to prescribe the procedure to be followed by the Appellate Tribunal constituted by it, and the Tribunal of the All India Bar Council constituted by it to inquire into and try the cases of professional misconduct of advocates of the Supreme Court.

20. Powers of the Tribunal and Courts of inquiry.—(1) For the purposes of any such inquiry the Appellate Tribunal, the Tribunal of All India Bar Council, a Tribunal, a sub-committee, or District Committee of the Bar Council or a District Court shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, in respect of the following matters, namely:—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents, and
- (c) issuing Commission for the examination of witnesses:

Provided that the Appellate Tribunal, the Tribunal of the All India Bar Council, a Tribunal, Sub-Committee or District Committee of the Bar Council shall not have power to require the attendance of the Presiding officer of any Court save with the permission of the High Court, or in the case of an officer of Criminal or Revenue Court, or the State Government.

(2) Every such inquiry shall be deemed to be a Judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Appellate Tribunal, the Tribunal of the All India Bar Council, a Tribunal, a Sub-Committee or a District Committee of the Bar Council shall be deemed to be a Civil Court for the purposes of sections 480, 482 and 485 of the Code of Criminal Procedure, 1898.

(3) For the purpose of enforcing the attendance of any person and examining him upon oath or of compelling the production of documents or of issuing commissions—

- (a) the local limits of the Appellate Tribunal, or of the Tribunal of the All India Bar Council shall be those of the jurisdiction of the Supreme Court;

- (b) the local limits of Tribunal or sub-committee of the Bar Council shall be those of the jurisdiction of the High Court for which the Bar Council is constituted and that of the District Committee of the Bar Council shall be the District for which it is appointed; and
- (c) the Appellate Tribunal, the Tribunal of the All India Bar Council or a Tribunal, a Sub-Committee or District Committee of the Bar Council, making an inquiry may send to any Civil Court having jurisdiction in the place where the Appellate Tribunal, the Tribunal of the All India Bar Council, or a Tribunal, a Sub-Committee or District Committee of the Bar Council making an inquiry is sitting any summons or any other process for the attendance of a witness or for the production of a document required by any of them or any commission which any of them desires to issue and the Civil Court shall serve such process as if it were a process for attendance or production before itself.

(4) Proceedings before the Appellate Tribunal, the Tribunal of the All India Bar Council or a Tribunal, a Sub-Committee or District Committee of Bar Council making an inquiry or a District Court in any such inquiry shall be deemed to be civil proceedings for the purposes of section 132 of the Indian Evidence Act, 1872, the provisions of the section shall apply accordingly.

21. Right of Advocates to practise.—(1) An Advocate of the Supreme Court shall be entitled as of right to practise in any High Court whether or not he is enrolled as an advocate of that High Court, and in all other Courts and before Tribunals or persons legally authorised to take evidence.

(2) Any other advocate shall be entitled as of right to practise—

- (a) in the High Court of which he is an advocate;
- (b) save as otherwise provided by sub-section (3) or by or under any other law for the time being in force in any Court in India and before any other Tribunal or person legally authorised to take evidence and,
- (c) before any other authority or person before whom such advocate is by or under the law for the time being in force entitled to practise.

(3) Where rules have been made by any High Court within the meaning of clause (24) of section 3 of the General Clauses Act, 1897, or in the case of any High Court for which a Bar Council has been constituted under this Act by such Bar Council under section 20, regulating the conditions subject to which advocates of other High Courts may be permitted to practise in the High Courts such advocates shall not be entitled to practise therein otherwise than subject to those conditions.

22. Power to frame and publish list of touts.—(1) The Bar Council may of its own motion or on a resolution passed by a Bar Association inquire into the conduct of any person after giving him an opportunity of showing cause as to why his name should not be included in the list of persons who may be proved by evidence of general repute habitually to act as touts.

Explanation.—The passing of a resolution declaring any person to be or not to be a tout, by a majority of the members present at a meeting, specially convened for the purpose, of an Association of persons entitled to practise as legal practitioners in any Court, shall be evidence of general repute of such persons for the purposes of this section.

(2) Every person whose name is included in list shall be deemed to be proclaimed as a tout, within the meaning of section 36 of Legal Practitioners' Act.

(3) The Bar Council may maintain a list of touts framed by the Court under section 36 of the Legal Practitioners' Act and may alter, add to or amend such list. The Bar Council shall communicate to Courts the names of persons who are declared as touts under sub-section (1).

(4) Any person who acts as a tout whilst his name is included in the list shall be punishable with imprisonment which may extend to three months or with fine which may extend to five hundred rupees or both.

23. General power of Bar Councils to make rules.—A Bar Council may make rules consistent with this Act to provide for and regulate any of the following matters, namely :—

- (a) the rights and duties of the advocates of the High Court and their discipline and professional conduct ;
- (b) the enrolment of advocates and removal of their names from the roll of advocates permanently or for a limited period ;
- (c) the conditions subject to which advocates of other High Courts may be permitted to practise in the High Court ;
- (d) the making of provisions of giving facilities for legal education and training and the holding and conduct of examination by the Bar Council ;
- (e) the establishment and maintenance of Law Schools ;
- (f) prescribing of the fees payable to the Bar Council in respect of the enjoyment of educational facilities provided or of the right to appear at examinations, held by the Bar Council ;
- (g) the management and investment of funds of the Bar Council
- (h) travelling allowances to be given to the members of the Bar Council and to the members of the All India Bar Council returned by that Bar Council ;
- (i) inquiries into the cases of persons alleged to be touts, and declaration of touts ;
- (j) any other matter incidental or ancillary to any of the foregoing matters.

24. General power of All India Bar Council to make rules.—The All India Bar Council may make rules consistent with this Act to provide for and regulate any of the following matters, namely :—

- (a) the rights and duties of the advocates of the Supreme Court and their discipline and professional conduct ;
- (b) the enrolment of advocates practising in the Supreme Court and the removal of their names from the roll of advocates, permanently or for a limited period ;
- (c) co-ordinating the activities of the various Bar Councils in giving facilities for legal education and the holding and conducting of examinations by those bodies ;
- (d) prescribing of fees payable to the All India Bar Council in respect of enrolment ;
- (e) the investment and management of the fund of All India Bar Council ;

(f) any other matter incidental or ancillary to any of the foregoing matters.

25. Power to fix fees payable as costs.—(1) The Supreme Court shall make rules for framing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate and agent upon all proceedings in the Supreme Court.

(2) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or any Court subordinate thereto.

26. Indemnity against legal proceedings.—No suit or other legal proceedings shall lie against the All India Bar Council or a Bar Council, or any Sub-Committee or District Committee of Bar Council Tribunal, or Appellate Tribunal or member of All India Bar Council or a Bar Council for any act in good faith done or intended to be done in pursuance of the provisions of this Act or any rule made thereunder.

27. Publication of rules.—(1) All rules made under this Act by the All India Bar Council shall be published in the official *Gazette of India*.

(2) All rules made under this Act by a Bar Council shall be published in the official *Gazette of the State*, or of each State, as the case may be, in which the High Court to which the Bar Council is attached, exercises jurisdiction.

28. Repeal, amendment of enactments etc.—(1) All Bar Councils constituted under the Indian Bar Councils Act, Act No. XXXVIII of 1926, or under any of the State Amendments to that Act, shall be deemed to have been constituted under this Act when this Act comes into force.

(2) When sections 10 to 25 come into force in respect of any High Court any enactment mentioned in the first column of the schedule to this Act which is in force in any State in which the High Court exercises jurisdiction shall, for the purposes of its application to that State be repealed, amended, to the extent and in the manner specified in the second column of this schedule.

(3) When sections 10 to 25 come into force in respect of any High Court of Judicature established by Letters Patent, this Act shall have effect in respect of such Court notwithstanding anything contained in such Letters Patent, in so far as they are inconsistent with this Act or any rules made thereunder, be deemed to have been repealed.

(4) When sections 10 to 25 come into force in respect of the High Court of Judicature at Bombay, the Bombay Pleaders Act, 1920, except section 7 thereof, shall cease to apply to or in respect of any person enrolled as an Advocate of the High Court under this Act and nothing in that Act shall be deemed to authorise the admission or enrolment of any person as a vakil or pleader of the High Court.

(5) When this Act has come into force in respect of any High Court any provision of any other enactment or any order, scheme, rule, form or bye-law made thereunder, which was before that date applicable to advocates, vakils or pleaders entitled to practise in such High Court shall unless such a construction is repugnant to the context or to any provision made by or under this Act, be constructed as applying to advocates of the High Court enrolled under this Act.

THE SCHEDULE

(See section 28)

REPEAL AND AMENDMENT OF ENACTMENTS

| Enactment repealed or amended | Extent of Repeal or Amendment |
|--|--|
| 1. The India Bar Council Act, Act XXXVIII of 1926. | Whole repealed. |
| 2. The U. P. Act, XXIV of 1950. | Whole repealed. |
| 3. The Legal Practitioners' Act of 1879. | (1) In section 4, section 6, clauses (a) and (b), section 38, section 41 and sub-section (1) for the words and figures, 'the India Bar Council Act, 1926' substitute the words, 'the All India Bar Councils Act of 1951'. |
| 4. The Indian Stamp Act, 1899. | In item 30 of the 1st Schedule (a) for the words 'under the India Bar Council Act, 1926' substitute the words, 'under the All India Bar Councils Act, 1951 when the enrolment fee is paid in a lump sum'; (b) for the words, 'Five hundred rupees' substitute the words, 'One hundred rupees'; (c) to the entry under 'Exemption' the following be added at the end 'or the entry of an Advocate who undertakes to pay annual fee to the Bar Council'. |
| 5. The Madras Stamp (Amendment) Act, 1922. | (a) In item 25 of schedule I-A for the words and figures, 'under the Indian Bar Council Act, 1926', substitute the words and figures:— 'under the Indian Bar Councils Act, 1951 when the enrolment fee is paid in a lump sum'; (b) for the words, 'six hundred rupees' substitute the words, 'one hundred rupees'; (c) for the words, 'three hundred and twelve rupees, eight annas', substitute the words, 'sixty two rupees and eight annas'; |

| Enactment repealed or amended | Extent of Repeal or Amendment |
|---|-------------------------------|
| <p>(d) to the entry under 'Exemption' the following be added at the end, namely:— 'or the entry of an Advocate who undertakes to pay an annual fee to the Bar Council'.</p> <p>6. The Bengal Stamp Amendment Act, 1935. Similar Amendments in Art. 30, substitute 'Rs.750/-' by 'Rs.100/-'.</p> <p>7. The Punjab Amendment Act, 1922. In Art. 30 of Schedule 1A, after the words, 'High Court' where they occur, the words and figures 'under the Indian Bar Council Act, 1951 when the enrolment fee is paid in a lump sum' shall be inserted. Similar amendment substituting 'Rs. 750/' by 'Rs.100/-'.</p> <p>8. The Assam Stamp Amendment Act, 1922. Similar Amendments.</p> | |

STATEMENT OF OBJECTS AND REASONS

It is undoubted truism that an independent Bar is as much a necessity for a civilized society as an independent judiciary. With the advent of independence of India a thorough overhaul of this profession has also become necessary. An independent and autonomous Bar alone can raise the standard of education, honesty, independence and morality of the profession.

The Indian Bar Councils Act (Act XXXVIII of 1926) was enacted with this view. But it suffered, amongst others, from the handicap that at that time the Highest Court of Justice was not located in India and for that reason a Central body co-ordinating the activities of the advocates in the various states could not be easily created. The establishment of the Supreme Court of India has given us an opportunity to remove that defect and now the conception of an All India Bar can be given a practical shape. It is with this view that the present Bill is being introduced.

The working of the Indian Bar Councils Act for the last twenty years has brought to the fore some of its inherent defects. One of these defects is the system of election to the Bar Councils. In that Act the whole of the State was kept as an electoral college for elections to the Bar Council. The result was that the electors could not vote on their own knowledge. They had to depend on the recommendation of others. Any-one who took to canvassing and arriying on propaganda had got better chances

of success than the one who, though otherwise much better fitted to be a member of the Bar Council, yet had neither the inclination nor the time for such methods of canvassing. So one of the important changes introduced in this Bill is the creation of smaller electoral colleges for election to the Bar Council which it is hoped would lead to the election of really competent persons from throughout the State to take part in the deliberations of that body.

In addition to the Bar Council attached to the various High Courts an All India Bar Council is proposed in this Bill which is to be a central body and it is expected that it will do the work of co-ordinating the activities of the various Bar Councils of the State. The election to the All India Bar Council has been kept indirect i.e., its members are to be elected mostly by the members of the Bar Councils. The matter of legal education, training and discipline is kept in the hands of the Bar Councils and in cases of inquiries regarding professional misconduct of the advocates, the All India Bar Council has been kept as a Court of Appeal.

The various changes intended to be effected in the Bar Councils Act of 1926 could not be easily effected by an amending Bill, hence this Bill is introduced to replace the Indian Bar Councils Act.

MOHAMMAD AHMAD KAZMI.

NOTE ON CLAUSES

Clauses 4 and 6.—As has been stated in the statement of objects and reasons to provide for smaller electoral colleges, the States have been divided into various electoral constituencies. Judges of the High Court and the Supreme Court who are raised to the Bench from amongst the advocates are expected to show keen interest in the organisation and efficiency of this profession, as such they have been given an effective representation in the Bar Council. It is possible that some persons who can take serious interest in the matters of the profession may not come in the Bar Council by election; provision, has, therefore, been made for their nomination by the High Court or the Supreme Court as the case may be.

Clauses 5 and 7.—The present period of the members of the Bar Council is too short for any constructive work and working out a planned scheme for the improvement of the profession. To remove this defect a longer period has been provided, but to avoid any stagnation and diminution of interest amongst the advocates, so far as the matters of the Bar Council are concerned, the election of one-third of the members after a period of three years has been provided by this clause.

Clauses 10 and 11.—It has been the keen desire in the profession to remove the distinction between the various classes of legal practitioners. This was the aim of the Indian Bar Councils Act of 1926, but the conditions of enrolment have again effected a great division and created two distinct classes in the profession consisting of persons having the same or almost the same qualifications.

It has, therefore, been provided that the advocates may be enrolled by paying a lump sum, or by paying an annual fee with the option of paying up

the lump sum at any time later on. This would bring a very large number of legal practitioners under the control of the Bar Council. The only class that would be left out would be *mukhtars*, but as most of the State Governments have stopped recruitment to this class, it is expected that the Bar Council would become the sole representative body of the Legal practitioners in India.

From the point of view of finances also it will add great deal to the strength of the funds of the Bar Council. At present the sole source of income of the Bar Council is from the annual enrolment of the advocates—a very uncertain source of income. Annual payment of fees can be a more reliable source of income. Further, a fee of Rs. 5 per annum payable by the Advocates to the Bar Council and a fee of Rs. 10 payable to the All India Bar Council has been provided from this point of view. It is expected that with financial stability the Bar Council would be in a position to take up the work of legal education in its hands.

In this connection it may further be mentioned that the share of the Bar Council in the enrolment fee is very insignificant, while that given to the State is very large, now that the main work of discipline is being transferred to the Bar Council it is only proper that the share of the Bar Council in the enrolment fee should be increased. For this purpose necessary amendments have been made in article 30 of the Stamp Act.

Clause 14.—A definition of misconduct has been added by this section.

Clauses 15 and 16.—The trial of cases for misconduct has been brought under the exclusive control of the Bar Council and an appeal has been provided to the All India Bar Council.

Clause 21.—By the establishment of the Supreme Court we have got a further opportunity of unifying the Bar of India. It has, therefore, been provided that the advocates enrolled in the Supreme Court shall have a right of practising in any High Court in India. This provision is not likely to affect the financial position of any Bar Council in India, as for an enrolment of an advocate in the Supreme Court, the condition precedent is that he should be enrolled as an advocate in the High Court of a State.

Clause 22.—At present the Bar Council has got no power to declare a person as a tout. Experience has shown that the High Court with its multifarious duties cannot easily act in this direction. It is, therefore, proposed that the Bar Council should have concurrent jurisdiction in the matter of declaration of persons as touts.

Clause 23.—In this clause the powers of the Bar Council in making provision for legal education has been more specifically brought to the fore.

Further as it is apprehended that the funds of the All India Bar Council may not be sufficient to meet the travelling allowances of members coming from the States it has, therefore, been provided that their travelling allowances may be paid by the Bar Councils of the High Court—each High Court Bar Council paying the expenses of those members of the All India Bar Council who have been returned by it to the All India Bar Council.

Clause 24.—In the matter of legal education the function of the All India Bar Council shall be that of co-ordinating the activities of the various Bar Councils, and with that object item (c) has been added to this clause.

BILL No. 36 OF 1951.

A Bill to provide for the better governance and administration of Muslim Wakfs and the supervision of Mutawallis' management of them, in India.

BE it enacted by Parliament as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act shall be called the Muslim Wakfs Act, 19

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) This section and sections 2 to 4 shall come into force at once. The rest of the Act shall not come into force until such date as the Government may, by notification in the Official Gazette, appoint in this behalf.

2. Application of the Act.—This Act shall apply to all wakfs whether created before or after the commencement of this Act, except those mentioned in the Schedule:

Provided that the State Government shall have the power to add to or take away any wakf mentioned in the Schedule which is situated within that State.

3. Definitions.—In this Act unless there is anything repugnant in the subject or context,—

(a) 'Alim' means a person who is a diploma holder of a 'madarsa Arabia' as defined in clause (7) of this section;

(b) 'beneficiary' means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects, and any other objects of public utility established for the benefit of the Muslim community;

(c) 'benefit' does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli;

(d) 'Board' means Board of Muslim Wakfs constituted under this Act;

(e) 'court' means unless otherwise stated either expressly or by implication, the court of the District Judge, or any court empowered by the Government to exercise jurisdiction under this Act;

(f) 'family' includes:—

(a) descendants,

(b) parents and grand parents

(c) wife or husband, and

(d) persons related through any ancestor male or female, who live with and are maintained by the wakf;

(g) 'Jamiat-Ulema' means Jamiat-Ulamai-Hind which has got its head-office at Delhi and includes all its branches in the various States of India;

(h) 'madarsa Arabia' includes any educational institution wherein,—

(i) the Nizami Course or Shia Theological Course or Oriental Course of studies is prescribed for grant of degrees:

Provided that a madarsa in which Shia Theological Course is prescribed shall be called 'Shia madarsa Arabia' and all the rest shall be called 'Sunni madarsa Arabia',

(ii) there are at least two teachers to teach Arabio, and

(iii) the annual budget, at least for the previous two years has amounted to a sum of five thousand rupees;

(i) 'mutawalli' means a manager of a wakf or endowment and includes, an *Amin*, a *Sajjadanishin*, a *Mujawar*, a *Khadim*, a *Naib-Mutawalli*, a committee of management and save, as otherwise provided in this Act any person who is for the time being in-charge of, or is administering, any endowment as such;

(j) 'net income' means the total income minus land revenue, and other cesses payable to the Government and local bodies;

(k) 'person interested in wakf' means any person who is entitled to receive any pecuniary or other benefit from the wakf and includes,—

(i) any person who has a right to worship or to perform any religious rite in a mosque, *idgah*, *imambara*, *dargah*, *khanqah*, *maqbara*, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf;

(ii) the 'wakif' and any descendant of the wakif, and the mutawalli;

(l) 'prescribed' means prescribed by rules made by the Government and includes bye-laws made by the Board under this Act;

(m) 'property' includes Government security bonds, shares in firms, and companies, stocks, debentures, and other securities and instruments;

(n) 'Shia Conference' means all India Shia Conference which has its head-office at Lucknow and includes all its branches in the various States of India;

(o) 'Shia Political Conference' means All India Shia Political Conference and includes all its branches in the various States of India.

CHAPTER II

SURVEY OF WAKFS AND BOARDS OF WAKFS

4. Survey of wakfs.—(1) Within three months of the commencement of this Act the Government shall by notification in the Official Gazette appoint a Gazetted Officer, either by name or by official designation, for the purpose of making a survey of all wakfs. Such Officer shall be called 'The Commissioner of Wakfs'.

(2) The Government may, from time to time when necessary, cancel any appointment made under sub-section (1) or make a new appointment.

(3) "The Commissioner of Wakfs" shall, after making such enquiries as he may consider necessary, ascertain and determine,—

(a) the number of all Muslim wakfs showing Shia or Sunni wakfs respectively:

Provided that when there is a dispute whether a particular wakf is a Shia wakf or a Sunni wakf and there are clear indications as to the sect to which it pertains in the deed of wakf, such dispute shall be decided on this basis;

(b) the nature of each wakf,

(c) the gross income of property comprised in the wakf,

(d) the amount of Government Land Revenue cesses and taxes payable in respect of wakf property,

(e) expenses incurred in the realization of the income and the pay of the Mutawalli of each wakf.

(4) In making such enquiries as aforesaid the Commissioner of Wakfs shall exercise all the powers of a civil court for summoning and examining witnesses and documents, making local inspections, appointing commissioners for examination of witnesses, examining of accounts and making local investigations.

(5) The Commissioner of Wakfs shall submit his report of enquiry to the Government.

(6) The total cost of carrying out the provisions of this section shall be borne by the Mutawallis of all wakfs in proportion to the income of the property of such wakfs situated in India.

(7) Notwithstanding any thing contained in the deed or instrument of creating any wakf any Mutawalli, may pay from the income of the wakf any sum due from him under sub-section (6).

(8) Any sum due from a Mutawalli under sub-section (6) may, on a certificate issued by the Government be recovered in the manner provided by law for recovery of an arrear of Land Revenue.

5. Appointment of Additional Commissioners of wakfs.—(1) In addition to the Commissioner of wakfs, appointed under section 4, the Government may, by notification in the Official Gazette appoint as many "Additional Commissioners of Wakfs" in each State as it may think necessary. The duties and powers of the Additional Commissioners of Wakfs shall be the same as those of the Commissioners of Wakfs under section 4.

(2) One of such Additional Commissioners of Wakf shall be appointed the 'Chief State Commissioner of Wakfs' for the purpose of sub-section (3).

(3) The Chief State Commissioner of Wakfs shall apportion the work of survey between the Additional Commissioners of Wakfs in such manner as he may think proper, and shall direct by whom any enquiry made or report should be submitted and such an enquiry made or a report submitted by an Additional Commissioner of Wakf shall, for the purposes of this Act, be deemed to be the inquiry or report, as the case may be of the Commissioner of Wakfs, under sub-section (5) of section 4:

Provided that nothing in sections 4 and 5 shall apply to any such State in which the survey of wakfs has taken place before the commencement of this Act.

6. Commissioner's report.—(1) The Government shall forward a copy of the report of the Commissioner of Wakfs to the Board. The Board shall as soon as possible notify in the Official Gazette the wakfs, to which, according to such reports the provisions of this Act apply.

(2) The Mutawalli of a Wakf or any person interested in a wakf or the Board may bring a suit in a Civil Court of competent jurisdiction for a declaration that any transaction held by the Commissioner of Wakfs to be a wakf, is not a wakf, or any transaction held or assumed by him not to be a wakf, is a wakf or that wakf held by him to pertain to a particular sect does not belong to that sect:

Provided that no such suit shall be instituted by the Board after more than two years of the receipt of the report of the Commissioner of Wakfs and by a Mutawalli or person interested in a wakf after more than two years after notification referred to in sub-section (1):

Provided further that no proceedings under this Act in respect of any wakf shall be stayed or suspended merely by reason of the pendency of any such suit or of any appeal arising out of any such suit.

(3) Subject to the final result of any suit instituted under sub-section (2) the report of the Commissioner of Wakfs shall be final and conclusive.

(4) The Commissioner of Wakfs shall not be made a defendant to any suit under sub-section (2) and no suit shall be instituted against him for anything done by him in good faith in due discharge of his duties under the Act.

7. Establishment of Board.—(1) There shall be established in each State a 'Board of Muslim Wakfs'.

(2) Each such Board shall be a body corporate, and shall have perpetual succession and a common seal, with power to acquire and hold property and to transfer any such property subject to the conditions and restrictions prescribed and shall by its said name, sue and be sued.

8. Constitution of the Board.—'The Board' shall consist of,—

(a) four members to be elected in the manner prescribed by Muslim members of the respective State Legislatures,

(b) four members to be elected in the manner prescribed by the Muslim members of the district boards of the respective States,

(c) four members to be elected in the manner prescribed by the Jamiat-Ulema and the teachers of the Sunni Madarsas Arabia,

(d) three members to be elected in the manner prescribed, by Shia Political Conference and Shia Conference and the teachers of the Shia Madarsas Arabia,

(e) One Mutawalli to be co-opted by the Sunni members of the Board and one Mutawalli to be co-opted by the Shia members of the Board,

(f) the President to be elected by the members of the Board if he is not one of the above seventeen members;

Provided that no Mutawalli of a Wakf shall be entitled to be elected in any of the categories save as provided in clause (e):

Provided further that where any one of the bodies referred to in sub-clauses (c) and (d) does not exist, the right of election shall be vested in the other body which is existing at that time.

9. Election of Members.—(1) If at any election of the Board no Muslim member is available under clauses (a) and (b) of section 8, the requisite number of such members shall be elected by the bodies referred to in sub-clauses (c) and (d) to the extent of one half each and on their failure to do so within the time fixed by the State Government, the deficiency shall be made up by nomination by the State Government.

(2) If the bodies referred to in clauses (c) and (d) fail to return the requisite number of members within the time as may be fixed by the State Government the deficiency shall be made up by nomination by the State Government.

10. Disqualification of a member.—A person shall not be eligible for appointment or election as a member, if such person—

(a) is not a Muslim;

(b) is less than twenty years of age;

(c) is of unsound mind; and stands so declared by a competent court;

(d) has applied for being adjudged an insolvent or is an undischarged insolvent;

(e) has been convicted of any offence under this Act;

(f) has been convicted of any such offence or is subjected by a criminal court to any such order as implies moral turpitude; and

(g) has on any previous occasion, been removed from office or by order of a competent court from any position of trust either for mismanagement or for corruption.

11. Term of Membership.—The members of the Board shall hold office for five years:

Provided that an elected or co-opted member shall, notwithstanding the expiration of his term of office, continue to hold office until the vacancy caused by expiration of the said term has been filled.

12. Situation of Office.—The office of the Board shall be located at such a place as is determined by the State Government.

13. Quorum.—The quorum for a meeting of the Board shall be seven.

14. Decision.—The decision of the Central Board shall be by a majority of its members present and voting. In case of equal division the President shall have a second or a casting vote;

Provided that the question of the use of surplus fund of Sunni or Shia Wakfs or the income of wakfs in accordance with the cypres doctrine and in case of those wakfs the object of which are not evident from any written instruments or in cases in which the objects for which they were created have

ceased to exist, shall be determined by the Board, by the votes, of only Sunni or Shia members present at the voting in respect of Sunni or Shia Wakfs respectively.

15. Meetings of the Board.—(1) The Board shall meet for the transaction of the business at least once in every three months and as often as is necessary to meet for the transaction of the business.

(2) Every meeting of the Board shall be convened by the Secretary, under the direction of the President and at least three weeks' notice shall be given to the members.

16. Special Meetings of the Board.—The special meetings of the Board shall be called by the President on the receipt of a requisition signed by not less than six members and specifying the business to be transacted at such meeting:

Provided that if the President fails to call such meeting within one month after the receipt of such a requisition, the meeting shall be called by the members who have signed the requisition.

17. President and Secretary.—(1) Each Board shall have a president and a Secretary who shall be Muslims:

Provided that no Mutawalli of a wakf or a Government Treasurer or a whole-time servant of the Government or the servant of any wakf administration, shall be elected as the President.

(2) Immediately after the formation of the Board and subsequently whenever it becomes necessary by reason of an existing or anticipated vacancy or otherwise to appoint a President, the Board shall elect one of its members or any other person as its President. The President shall be honorary and shall hold office for a term of five years, but if he is a member of the Board his term shall expire on the expiry of his term as a member.

(8) The Board shall appoint a Government Gazetted Officer as its whole-time Secretary on such terms or allowances and other conditions of service as may be prescribed:

Provided that if a Government Gazetted Officer is not available the Board may appoint another person.

18. Staff of Board.—(1) The Board may appoint such officers and staff including superintendents of wakfs, inspectors, auditors, and the like, on such salaries, allowances and conditions of service as may be necessary for the purpose of this Act and for such a period as it may think fit.

(2) The President, Secretary and all other persons appointed under sub-section (1) shall be deemed to be public servants within the meaning of the Indian Penal Code, 1860.

(8) The Board may fine, suspend, dismiss or remove a Secretary who is not a Government Gazetted Officer, or any other person appointed by it under sub-section (1):

Provided that the Secretary who is a Government Gazetted Officer, shall be liable to removal by the State Government on the recommendation of the Board.

19. Functions of the Board.—(1) The General Superintendence of all wakfs to which this Act applies shall vest in the Board. The Central Board

shall do all things reasonable and necessary to ensure that wakfs or endowments under its superintendence are properly maintained, controlled and administered and duly appropriated to the purposes for which they were founded or for which they exist.

(2) Without prejudice to the generality of the provisions of sub-section (1) the powers and duties of the Board shall be,—

(a) to complete and maintain an authentic record of rights containing information relating to the origin, income, object and beneficiaries of every wakf in each district,

(b) to prepare and settle its own budget,

(c) to settle and pass budget submitted by the Mutawallis, to the Board:

Provided it is in consonance with the wishes of the wakif and is in accordance with the terms of the deed of wakf, or that of a resolution of the Board, if any,

(d) to appoint and remove Mutawallis according to the provisions of this Act,

(e) to institute and defend suits and proceedings in a court of law relating to,—

(i) administration of wakfs,

(ii) taking of accounts,

(iii) appointment and removal of Mutawallis in accordance with the deed of wakf,

(iv) putting the Mutawallis in possession of a wakf or removing him from that possession,

(v) settlement or modifications of any scheme or management,

(f) to sanction the institution of suits under section 92 of the Code of Civil Procedure, 1908, relating to wakfs, to which this Act applies,

(g) to take measures for the recovery of lost properties of any wakf,

(h) to settle schemes of management for a wakf or application of surplus fund of a wakf or income of wakf properties of a wakf in accordance with the cypres doctrine in case of those wakfs, the objects of which are not evident from any written instrument or in cases in which the object for which they were created have ceased to exist,

(i) to enter upon and inspect wakf property,

(j) to cause inspection to be made of the property and the office of a wakf including accounts, and to authorise the Secretary, or any of its members, officers, or servants for that purpose,

(k) to investigate into the nature and extent of wakfs and properties of the wakf and call from time to time accounts and other returns and information from the Mutawallis and give directions for the proper administration of wakfs,

(l) to arrange for the auditing of accounts submitted by Mutawallis,

(m) to direct, the deposit of surplus money in the hands of a Mutawalli in any approved bank or to utilize it according to the resolution of the Board,

(n) to administer the Wakf Fund,

(o) to keep regular account of receipts and disbursements and submit the same, in the manner prescribed,

(p) to institute when necessary an enquiry relating to the administration of the wakf:

Provided that in the appointment of Mutawallis or making any other arrangement for the management of wakf property, the Board shall be guided as far as possible by the directions of wakif, if any.

(q) to sanction leases of properties for more than three years or mortgage or exchange properties according to the provisions of the Muslim Law:

Provided that at least three-fourths of the members of the Board vote in favour of such a transaction,

(r) to furnish to the State Government or to any such officer as the State Government may appoint in this behalf, any statement, report, return or other documents or any other information which the State Government or any such officer, as the case may be, may require from time to time,

(s) to direct the Mutawalli to institute and defend suits in courts of law, and take necessary action in respect of wakf property:

Provided that in case of failure of Mutawalli to do so, or in case when there is no Mutawalli or when the office of Mutawalli is disputed, the Board shall do all these things itself and shall incur the necessary expenses from the wakf fund;

(t) to realise, in the prescribed manner, and subject to prescribed conditions, out of the income of any wakf, the costs incurred by the Board in any of the matters mentioned in clause (s), in respect of such wakf,

(u) to permit a Mutawalli to retire from his office and in case the Mutawalli has power to appoint his successor, to permit him to make appointment in his life time.

20. Delegation of Powers.—The Board may delegate any of its powers and duties under this Act to the President or Secretary or to any one or more of its members and may likewise withdraw such delegation.

21. Establishment of Committees.—The Board whenever it considers necessary, may, establish either generally for a particular purpose or in any specific area or areas committees for the supervision of wakfs in that area. The constitution, functions and duties of such committees shall be determined from time to time by the Board:

Provided that it shall not be necessary for the members of such committees that they should be members of the Board also.

22. Removal of a member.—The Board may, by notification in the Official Gazette, remove any member from the Board if he—

(a) refuses to act or becomes incapable of acting as a member of the Board, or

(b) becomes subject to any disqualification mentioned in section 10, or,

(c) without excuse, sufficient in the opinion of the Board, is absent without the consent of the Board, for more than six consecutive meetings of the Board.

23. Resignation of a member.—A member of the Board may resign his office by giving notice in writing to the President and on such resignation being accepted by the Board, shall be deemed to have vacated his office.

24. Filling of a vacancy.—When a seat of a member becomes vacant by his removal, resignation or death, a new member shall be elected or co-opted as the case may be, in the manner provided in section 8 and shall hold office as long as the member whose place he fills would have been entitled to hold office if such vacancy had not occurred:

Provided that no act or order of the Board or its officer shall be deemed invalid by reason only that the member or members of the Board at the time of the performance of such an act or at the passing of such an order was less than the number provided in section 7.

25. Removal of President.—The State Government may, remove the President if the President,—

(a) is or becomes subject to any disqualification specified in Section 10,

(b) refuses to act or becomes incapable of acting, or acts in a manner which the State Government after hearing any explanation that he may offer, consider to be prejudicial to the interest of wakfs, or

(c) if he fails without excuse to attend three consecutive meetings of the Board.

26. Opinion of the Board.—The mutawalli of any wakf governed by this Act may apply by petition to the Board for its opinion, advice or direction on any question affecting the management or administration of the property of such wakf and the Board shall give such opinion, advice or direction:

Provided that the Board shall not be bound to give such opinion, advice or direction on any question which is not in its opinion a fit question for summary disposal.

27. Inspection and copies of Records.—The Board may grant inspection and copies of its proceedings or other records in its custody on payment of such fees and subject to such conditions as may be prescribed by rules. All copies issued under this section shall be certified by the Secretary of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872.

CHAPTER III

REGISTRATION OF WAKFS

28. Registration.—(1) Every wakf whether created before or after the commencement of this Act shall be registered at the office of the Board.

(2) The Mutawalli of every such wakf shall make an application for registration within three months of his entering into possession of the wakf property, or in the case of wakf existing at the time of formation of the first Board, within three months of the formation of such Board:

(3) Applications for registration may also be made by wakif or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(4) An application under this section shall be accompanied by a true copy of the deed or deeds of wakf, together with a statement containing the following particulars as far as known to the applicant,—

- (a) a description of the wakf properties sufficient for the identification thereof,
- (b) the gross annual income from such properties,
- (c) the amount of Government revenue, and cesses and of all rents and taxes payable in respect of the wakf properties,
- (d) an estimate of expenses annually incurred in the realisation of the income of the wakf properties,
- (e) the amount set apart under the wakf for—
 - (i) the salary of the Mutawalli and allowances to individuals;
 - (ii) purely religious purposes;
 - (iii) charitable purposes:

Provided that every such applicant shall be verified by the Mutawalli in the manner laid down in the Code of Civil Procedure 1908 for the verification of pleadings.

(5) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(6) On receipt of an application for registration, the Board may, before registration of the wakf, make such enquiries as it thinks fit in respect of its genuineness and validity and the correctness of any particulars, in the statement filed with the application and when the application is made by any person holding possession of any property or properties belonging to the wakf, the Board shall give notice of the application to the person in possession and hear him, if he desires to be heard before passing final orders.

(7) An application for registration of wakfs may be presented or be sent by registered post to the office of the Board.

29. Register of wakfs.—The Board shall maintain a register of wakfs which shall contain the following particulars in respect of each wakf and shall also contain a copy or copies of the deed or deeds creating the wakf when available,—

- (a) the names of trustees, Mutawalli and other persons connected with the administration of the wakf,
- (b) the rule of the succession of the office of the Trustees (if any), or Mutawallis under the deed or wakf or by custom or by usage,
- (c) particulars of the scheme of administration and the scale of expenditure at the time of registration,
- (d) particulars of all properties relating to the wakf and all title deeds and documents relating thereto, and
- (e) Such other particulars as may be prescribed.

30. Power to order Mutawalli to apply.—The Board may direct a Mutawalli to apply for the registration of a wakf, or to supply any information regarding a wakf or may itself collect such information and may cause the wakf to be registered or may at any time amend the register of wakfs.

CHAPTER IV

AUDIT OF ACCOUNTS

31. Audit.—The accounts kept by the Board and the accounts submitted by Mutawallis under section 50 shall be audited annually or at such other intervals as may be determined by the Board by the auditors appointed under section 18 of this Act.

(2) The Auditors shall submit their report,—

(a) to the local Government in the case of accounts of a Board; and

(b) to the Board, in the case of the accounts of a wakf.

(8) The audit report of the auditors shall among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover moneys or other property or of loss or of waste of money or other property caused by neglect or misconduct of the Mutawalli.

32. Examination of the Auditor's report.—The Board shall examine the auditor's report and after calling for the explanation of any person in regard to any matter mentioned therein shall pass such orders on the report as it may think fit.

33. Realization of Amount.—Every sum certified to be due from any person by an auditor in his report under section 31, unless such certificate is modified or cancelled by the Board by an order made under section 32 and every sum due on a modified certificate shall be recoverable from such person by the Board.

CHAPTER V

ENQUIRY AND SUPERVISION

34. Enquiries by the Board.—For the purpose of verifying the particulars contained in the statement filed under section 28 or acting on the report of the auditor submitted under section 31, the Board may enquire into any matter either through any of its officer or members or any other person appointed under this behalf.

35. Application for enquiry.—Any member of the community to which the wakf belongs may by an application, supported by an affidavit, apply to the Board to institute any enquiry relating to the administration of a wakf, and the Board may take such action as it may think fit.

36. Powers of enquiring officer.—For the purposes of an enquiry under this Chapter the enquiring officer or committee shall have the same power of enforcing the attendance of witnesses and production of documents as the Civil Court has under the Code of Civil Procedure, 1908.

CHAPTER VI

LEGAL PROCEEDINGS

37. Civil suits relating to wakf.—Notwithstanding anything contained in section 92 of the Code of Civil Procedure, 1908 (Act V of 1908), a suit to obtain any relief mentioned in section 92 of the said Code, relating to any wakf to which this Act applies may be instituted by the Board without

obtaining the consent referred to in that section, or by any person interested in the wakf with the previous sanction in writing of the Board and without obtaining the consent referred to in that section:

Provided that if in such suit the validity of proprietary of any order or direction passed or made by the Board is challenged a suit shall be instituted without previous sanction after giving two months notice to the Board as provided in clause 38.

38. Suits under Religious Endowments Act.—A suit under section 14 of the Religious Endowments Act, 1863 (XX of 1863), concerning a wakf to which this Act applies, may, notwithstanding anything to the contrary contained in that Act be instituted by the Board without obtaining the leave referred to in section 18 of that Act, and no such suit shall be instituted by any person without the consent in writing of the Board.

39. Protection of the Board Committees, and their staff.—(1) Save as otherwise provided in this Act, no act done or direction issued by the Board *except an order settling the scheme of management of a wakf* shall be questioned in any court.

(2) No suit shall be instituted against the Board, or any of its member or servants or any other person deputed by the Board for carrying out any enquiry under this Act, for anything done by it or him in good faith in ~~the~~ discharge of his duties under this Act.

40. Compromise in suits by or against mutawallis.—No suit or proceedings in any court by or against a mutawalli of a wakf to which this Act applies, and relating to title to wakf property or to the rights of the mutawallis shall be compromised without the sanction of the Board.

41. Notice of suits by courts.—When any suit relating to title to any wakf property or to the right of Mutawalli is instituted in any Civil Court such court shall give a notice of such suit to the Board at the cost of the plaintiff.

42. Notice of suits.—No suit shall be instituted against the Board, in respect of any act purporting to be done by the Board in due discharge of its functions under this Act, or for any relief in respect of any wakf, until the expiration of two months next after notice in writing has been delivered to the Secretary, or left at the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

43. Power of Board to make application to the court in case of failure of mutawalli to discharge his duties.—Where a charge exists on any property for the performance of any religious, pious or charitable act recognised as such by Muslim Law and there is a failure to perform such an act the Board may apply to the Court for an order directing the person in possession of the property to pay to the Board the amount necessary for the performance by the Board, or to any person appointed by the Board in this behalf, of the act for the performance of which the charge was created.

44. Application to compel mutawalli to discharge obligation or appointment of receiver.—Where the mutawalli of a wakf wilfully fails to discharge any of the duty imposed on him under the wakf, the Board or any person interested in wakf may make an application to the court for an order,—

(a) directing the mutawalli to discharge such obligation within a time to be specified in the order or

(b) appointing receiver of the funds and property of the wakf if the mutawalli fails to carry out such direction within the time so specified.

45. Notice to Board of proceedings under the Land Acquisition Act, 1894, in respect of wakf of property.—(1) In the course of a proceeding under the Land Acquisition Act, 1894 (I of 1894), the Collector before making an award in respect of wakf property, shall issue a notice to the Board and shall stay further proceedings to enable it to plead as a party to the proceedings at any time within three months from the date of the receipt of the notice.

(2) Where the Board has reason to believe that any property under acquisition is a wakf property, it may at any time before the award is made appear and plead as a party to the proceedings.

(3) When the Board has appeared under the provision of sub-section (2), no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 (I of 1894), without giving opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 (I of 1894), without giving opportunity to the Board to be heard shall be avoidable at the option of the Board.

46. Notice of sales to be given to Board.—(1) Whenever any wakf property is notified for sale in execution of a decree of a Civil Court under the provisions of any Act, for the recoveries of public demand or in pursuance of a decree or an order of a collector or any revenue officer such court, collector, or revenue officer, shall give notice thereof to the Board also.

(2) If the notice required by sub-section (1) to be given to the Board in respect of any sale is not given, the sale shall be voidable at the option of the Board.

CHAPTER VII

ADMINISTRATION CHARGES

47. Contribution by wakf.—(1) Every wakf to which this Act applies shall contribute annually for meeting the expenses incurred in the administration of this Act, such sum not exceeding five per cent. of the net annual income of such of its property as is situate in the State as the Board, subject to the sanction of the State Government may determine:

Provided that in case of those educational institutions which do not receive any aid from the Government or of wakf whose income is less than rupees one hundred per annum the aforesaid percentage shall not be levied.

(2) Contribution under this section shall be payable with effect from the date on which this section comes into force.

(8) The Board may, in the case of any particular wakf or wakfs, reduce or remit such contribution as it may think fit.

(4) Such contribution shall, subject to the prior payment of any dues to the Government and any other Statutory charges on the wakf property or the income thereof, be a first charge on the income of the wakf.

(5) If a mutawalli or person incharge of the managing or administration of the wakf realizes the income of the wakf and neglects or refuses to pay such contribution he shall also be personally liable for such contribution to the extent of the balance of realization remaining in his hand after payment of Land Revenue, cesses and taxes due to Government and local bodies, and the liability may be enforced in the manner as aforesaid.

(6) The mutawalli of a wakf may realize the fee payable by him under sub-section (1) from the beneficiaries of such wakf, but the realizable fee from any one of such person shall not exceed such amount as shall bear to the total contribution payable the same proportion as the value of benefits recoverable by such persons bears to the entire net available income of such wakf:

Provided that, if there is any income of such wakf in excess of the amount payable as due under this Act other than the fee payable under sub-section (1) and in excess of the amount payable under the wakf deed, the fee shall be paid in the first instance out of such income.

48. Board's power to borrow.—The Board shall have the power with the previous sanction of the State Government to borrow for the purpose of giving effect to the provisions of this Act, such amount and in such conditions as the State Government may determine.

CHAPTER VIII

MUTAWALLIS

49. Appointment of mutawallis.—When there is a vacancy in the office of mutawalli of a wakf and there is no one competent to be appointed under the terms of the deed of wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as a mutawalli from such period and on such conditions as it may think fit.

50. Duties of mutawallis.—(1) Every mutawalli shall carry out all directions consistent with the provisions of this Act, issued to him by the Board of wakf or by a committee appointed by the Board for the purpose of proper administration of wakfs. In particular he shall,—

(a) supply the details of wakfs in his charge,

(b) submit within one month after the 31st day of March, next following the date on which the wakf has been registered under section 28 and thereafter within thirty days of the 31st day of March, in every year, a full and true statement of accounts in such form and containing such particulars as may be prescribed by the Board and verified in manner prescribed by the Code of Civil Procedure, 1908, for verification of pleadings of all moneys received or expended by him on behalf of the wakf of which he is the mutawalli in respect of that portion of the wakf property which is situate in the State during the period of twelve months ending on the 31st March preceding the submission of such statement or during that portion of the said period during which the provisions of this Act have been applicable to the wakf:

Provided that the date on which the annual accounts are to be closed may be verified at the discretion of the Board.

(2) All the details, accounts, and statements mentioned in sub-section (1) shall be submitted to Board. The mutawalli shall if and when required further be bound by himself or by his agent to attend at the audit of his accounts and to give all informations required relating to his accounts.

51. Power of the Board to make certain payment on behalf of wakf.—Where a mutawalli refuses to pay or fails to pay any Land Revenue, cesses, rent, rates of taxes due to the State or to a local Authority/Body from a wakf, the Board may defray the charges from the wakf fund and may recover the amount so paid from the wakf property and, if the refusal or failure of the mutawalli was in the opinion of the Board wilful, the Board may also recover from the mutawalli responsible for such refusal or failure damages at the rate of twelve and a half per cent. of the amount so paid:

Provided that a mutawalli aggrieved by a decision of the Board to recover damages under this sub-section may apply to the court to have the order regarding damages set aside or modified and the order of the Court on such application shall be final.

52. Removal of mutawallis by the Board.—The Board may remove a mutawalli from his office if such mutawalli—

(a) after having once been convicted of an offence punishable under section 54 is again convicted of any such offence;

(b) is convicted of an offence relating to the wakf property or money which in the opinion of the Board renders him unfit to continue to be a mutawalli, or

(c) refuses to act; and

(d) applies for being adjudicated or is an undischarged insolvent.

53. Committee of supervision.—(1) Whenever the supervision of a wakf is vested in any existing committee appointed by the wakf or any competent court of authority such committee shall, notwithstanding anything contained in the Act, continue to function until superseded by the Board under sub-section (2):

Provided that such committee shall be under the control of the Board and shall abide by such directions of the Board as or not inconsistent with any directions of the wakf or of the court or authority appointing such committee.

(2) The Board may supersede any such committee as aforesaid if it does not in its opinion function properly and satisfactorily, and on such supersession any decree or order of a court or competent authority under which such committee has been constituted shall cease to have any force.

(3) Any order passed by a Board under sub-section (2) shall be final and shall not be questioned in any court of law.

54. Penalties.—(1) If a mutawalli fails without reasonable cause or excuse, the burden of proving which shall be upon him,—

(a) to apply for a registration of a wakf as provided in section 28, or

(b) to submit statement of particulars or of accounts and returns as required by this Act, or

(c) to supply information or particulars required by the Board, or

(d) to allow inspection under the provision of this Act, of wakf properties and deeds and documents relating thereto, or

(e) to give assistance in enquiries and investigations when called upon to do so by the Board or Committee appointed by the Board or by superintendents or auditors working under the orders of the Board, or

(f) to deliver possession of any wakf property if ordered to do so, by the Board,

(g) to deposit any surplus income in his hands in any recognized bank when directed to do so by the Board.

he will, on conviction before a magistrate of the first or second class be punishable with fine which may extend to rupees two hundred and fifty for the first offence and to rupees one thousand for every subsequent offence.

(2) No Magistrate shall take cognizance of an offence under sub-section (1) otherwise than on a complaint made by any person duly authorised by the Board in this behalf.

CHAPTER IX

RULES AND BYELAWS

55. Rules by State Government.—(1) The State Government may after previous publication in the Official Gazette may make rules not inconsistent with this Act for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the State Government may make rules with respect to all or any of the following matters,

(a) the conditions and restrictions subject to which the Board may transfer any property under sub-section (2) of section 7 of the Act;

(b) the method in which the work of the survey of wakf under Chapter I is carried on;

(c) the manner in which the member shall be elected under section 8 of the Act;

(d) other matters expressly required or allowed by this Act to be prescribed or done by the State Government.

56. Byelaws by the Board.—(1) The Board may subject to the approval of the State Government make byelaws not inconsistent with this Act for the purpose of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Board shall with the approval of the State Government have power to make byelaws with respect to,—

(a) all matters required or allowed by this Act to be prescribed or done by the Board,

(b) the Conduct of business by the Board,

(c) the grant of travelling allowances to the President and members of the Board,

(d) the constitution, Functions and procedure of the committee appointed by the Board and their finance,

(e) the custody and investment of wakf funds,

(f) the custody and investment of the Fund of any wakf, and the conditions subject to which a mutawalli shall deposit wakf money in his hands and the conditions subject to which a Mutawalli can withdraw such money,

(g) books and accounts to be kept at the office of the Board and by the committee appointed by the Board,

(h) the manner in which the accounts of wakf shall be audited and published the time and place of such audit, the form and content of the auditors' report and the scale of remunerations to be paid to the auditors,

(i) the number, designation, grades, salaries, allowances, and other conditions of service, including the power and duties of the officers and servants of the Board,

(j) the custody of the common seal,

(k) the person by whom receipts may be granted for money received by the Board,

(l) the granting of pensions and gratuities out of wakf Funds.

(m) the method of calculating the income of a wakf, for the purpose of levying contribution under this Act.

(n) the fee to be levied on applications before the Board of committees under the Act, or on application for inspection of register of wakfs and other records and for copies of the proceedings and other records of the Board.

(2) All byelaws framed under this section shall be published in the Gazette and shall have thereafter the force of law.

57. Names of members and President to be notified.—The names of the members and President of the Board shall be published in the official Gazette of the State as soon as possible after their election or co-option as the case may be.

58. Budget of the Board and sub-committee.—A copy of the budget of the Board shall be submitted to the Government for information. The Board shall also give such information and submit such reports, returns and statements as may be called for by the local Government.

59. Extension of time.—The Board may, if it is satisfied that there is sufficient cause for doing so, extend time within which any act is required or ordered to be done under this Act.

60. Wakf Fund.—All moneys realized under section 47 and all moneys realized from fees in respect of proceedings before the Board and all other moneys realized under this Act, shall form a Fund to be called the 'Wakf Fund'.

Such fund shall be under the control of the Board subject to the general supervision of the State Government and shall be applied to the following expenses which shall be met exclusively from that fund;

(a) repayment of any loan incurred under section 48 and payment of interest thereof,

(b) payment of the cost of audit of wakf Fund;

(c) payment of the salary and allowances of the Secretary and staff of the Board and the Secretary and the staff of sub-committee under the Board;

(d) payment of travelling allowances to the President, members, Secretary and staff of the Board or of any person deputed for any enquiry under the Act;

(e) payment of all expenses incurred by the Board and the sub-committee in the performance of the duties imposed and the exercise of the powers conferred by this Act.

61. Disposal of fines under this Act.—All fines realized by a magistrate under section 54 shall be paid to the Board and shall be part of the wakf fund.

62. Liability of Government for expenses.—Government shall not be liable for any expenditure incurred in the administration of this Act.

CHAPTER X

SAVINGS AND REPEAL

63. Savings.—Nothing in the following Regulations, Acts and provisions shall apply to any wakf to which this Act applies:—

- (i) Bengal Regulation, XIX of 1810.
- (ii) Section 5 of the Religious Endowments Act, 1863. (XX of 1863).
- (iii) The Charitable Endowments Act, 1890 (VI of 1890).
- (iv) The Charitable and Religious Trust Act, 1920 (XIV of 1920).
- (v) Sections 5 to 10 of the Musalman Wakfs Act, 1923 (XLII of 1923).

64. Repeal.—Sections 8 and 4 of the Musalman Wakfs Act, 1923 (XLII of 1923), in their application to the U.P. and of Agra and Oudh are hereby repealed.

65. Recovery of dues by distress.—Every sum recoverable under section 33 and the contribution under section 47 may be recovered by the Board by means of distress of sale of movable property belonging to the person liable for payment, in accordance with the rules framed by the State Government in this behalf.

THE SCHEDULE

(See section 2)

1. Wakfs governed by Act XV of 1878.
2. Wazir Begam Trust, Lucknow.
3. Agha Abbu Sahib Trust, Lucknow.
4. Shah Najaf Trust, King's side, Lucknow and, Queen's side, Lucknow.
5. Nazmain Trust, Lucknow.

STATEMENT OF OBJECTS AND REASONS

The management of Wakfs though it vests immediately in a mutawalli, is a subject which requires the supervision of the State. The need for supervision has been felt, and in addition to various enactments dealing with the subject of charitable endowments, the Musalman Wakf Act 1923, (No. 42 of 1923) was enacted for the whole of India. This Act merely provides for the submission of audited accounts by the Mutawallis, to the district judges. This Act did not prove of much practical value. The Musalman Wakf (Bombay Amendment) Act 1935 (XVIII of 1935) amended the Musalman Wakf Act 1923 (42 of 1923). The Bengal Wakf Act 1934, (No. XIII of 1934) was enacted to create a machinery for the supervision of wakfs in Bengal. The U.P. followed suit and the United Provinces Muslim Wakfs Act 1936 (XIII of 1936) was passed creating a Central Wakf Board. Similarly Bihar also passed a legislation almost on the same lines. The working of these Acts has brought out the necessity of some amendments. Further many of the States have got no Act for the purpose. It is therefore necessary, that one uniform and consolidated legislation may be passed by the Centre, which may be adopted as a model Act by the various States. It is with this view that the present Bill is introduced.

MOHAMMAD AHMAD KAZMI.

The following Bills were introduced in Parliament on the 14th April, 1951:—

BILL No. 37 OF 1951

A Bill to provide for the administration and control of the Rajghat Samadhi in Delhi

BE it enacted by Parliament as follows:—

1. Short title and commencement.—(1) This Act may be called the Rajghat Samadhi Act, 1951.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act,—

(a) "Committee" means the Rajghat Samadhi Committee constituted under this Act;

(b) "Samadhi" means the structure built in token of reverence for Mahatma Gandhi at Rajghat on the Western bank of the Jamuna in Delhi, and includes the premises described in the Schedule with all buildings contained therein, together with all additions thereto or alterations thereof which may be made after the commencement of this Act.

3. The Rajghat Samadhi Committee.—(1) The administration and control of the Samadhi shall be vested in a Committee constituted in the manner hereinafter provided.

(2) The Committee shall by the name of "The Rajghat Samadhi Committee", be a body corporate and shall have perpetual succession and a common seal and shall by the said name sue and be sued through its Chairman.

4. Composition of the Committee.—(1) The Committee shall consist of the following members, namely:—

(a) the president of the municipal committee within the local limits of whose jurisdiction the Samadhi is situated, *ex-officio*;

(b) three officials nominated by the Central Government;

(c) three non-officials nominated by the Central Government.

(2) The Central Government may appoint any person referred to in clauses (a), (b) and (c) of sub-section (1) or any other person to be the Chairman of the Committee, and if any other person is so appointed, he shall be deemed to be a member of the Committee within the meaning of sub-section (1).

(3) All persons nominated by the Central Government to be members of the Committee shall hold office during the pleasure of the Central Government.

5. Powers and duties of the Committee.—Subject to such rules as may be made under this Act, the powers and duties of the Committee shall be—

(a) to administer the affairs of the Samadhi and to keep the Samadhi in proper order and in a state of good repair;

(b) to organise and regulate periodical functions at the Samadhi;

(c) to do such other things as may be incidental or conducive to the efficient administration of the affairs of the Samadhi.

6. Power of Central Government to make rules.—The Central Government may, by notification in the Official Gazette, make rules to carry out the objects of this Act, and to regulate access to the Samadhi or to any portion thereof.

7. Power of Committee to make bye-laws.—(1) The Committee may make bye-laws consistent with this Act and the rules made thereunder for all or any of the following purposes, namely:—

(a) the manner in which meetings of the Committee shall be convened, the quorum for the transaction of any business thereat and the procedure at such meetings;

(b) the appointment of such persons as may be necessary to assist the Committee in the efficient performance of its duties and the terms and conditions of service of such employees;

(c) the duties and powers of the employees of the Committee;

(d) the submission of accounts, returns and reports to the Committee by any of its employees.

(2) All bye-laws made under this section shall be subject to the condition of previous publication and shall not have effect until they are approved by the Central Government.

8. Validity of acts of Committee not to be questioned by reason of vacancy, etc.—No act or proceeding of the Committee shall be deemed to be invalid merely by reason of any vacancy in, or any defect in the constitution of, the Committee.

THE SCHEDULE

[See section 2(b)]

The Samadhi premises, admeasuring 44·85 acres, bounded
on the north by a vacant piece of land belonging to the Delhi
Improvement Trust;
on the south by Power House Road;
on the east by the Power House; and
on the west by Bela Road.

STATEMENT OF OBJECTS AND REASONS

The object of this Bill is to ensure the proper maintenance, preservation and administration of the Rajghat Samadhi, the Shrine built in memory of the Father of the Nation.

The means proposed in this Bill to ensure this end is the establishment with certain powers of a Committee consisting of seven members, of whom four members will be non-officials. The Chairman of the Committee will be nominated by the Central Government.

The Committee shall do all things reasonable and necessary to ensure that the Rajghat Samadhi is properly maintained, controlled and administered. It shall make proper arrangements for the watch and ward of the Samadhi; it shall organise and regulate periodical functions at the Samadhi, such as Sarvodaya Day, Friday prayers, Gandhi Jayanti; and it shall control access to the Samadhi.

It is felt that without legislative enactment it will not be possible to enforce authority adequate for the purposes of maintenance and regulation of the Shrine. *Ad hoc* Committees depend too much upon personal factors and in a crisis the responsibility devolves upon the magistracy and the police. A statutory Committee is, therefore, being set up.

N. V. GADGIL.

NEW DELHI;

The 26th March, 1951.

BILL NO. 39 OF 1951

A Bill further to amend the Indian Tariff Act, 1934.

BE it enacted by Parliament as follows :—

1. Short title.—This Act may be called the Indian Tariff (Second Amendment) Act, 1951.

2. Amendment of section 4A in Act XXXII of 1934.—In sub-section (2) of section 4A of the Indian Tariff Act, 1934 (hereinafter referred to as the principal Act), for the words “in session”, wherever they occur, the word “sitting” shall be substituted.

3. Amendment of the First Schedule, Act XXXII of 1934.—In the First Schedule to the principal Act,—

(i) for Item No. 8 (3), the following Item shall be substituted, namely :—

| | | | | | | |
|---------|-----------------------------------|--------------|------------------------------------|----|----|-----------------------------|
| “ 8 (3) | Fruits, candied and crystallised. | Protective . | 40 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952”; |
|---------|-----------------------------------|--------------|------------------------------------|----|----|-----------------------------|

(ii) for Item No. 20 (1), the following Item shall be substituted, namely :—

| | | | | | | |
|----------|--|-----------|------------------------------------|----|----|--|
| “ 20 (1) | Fruit Juices, Squashes, Cordials and Syrups not otherwise specified— | | | | | |
| | (a) manufactured in a British Colony. | Revenue . | 26 per cent. <i>ad valorem.</i> | .. | .. | |
| | (b) not manufactured in a British Colony. | Revenue . | 36 per cent. <i>ad valorem.</i> | .. | .. | |

(iii) for Items Nos. 20 (3), 20 (4) and 20 (5), the following Items shall be substituted, namely :—

| | | | | | | |
|----------|---|--------------|------------------------------------|----|----|----------------------------|
| “ 20 (3) | Fruits, canned, bottled or otherwise packed, not otherwise specified— | | | | | |
| | (a) manufactured in a British Colony. | Protective . | 26 per cent. <i>ad valorem.</i> | .. | .. | December 31st 1952. |
| | (b) not manufactured in a British Colony. | Protective . | 36 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952. |

*The President has, in pursuance of clause (1) of article 117 of Constitution of India, recommended to Parliament the introduction of the Bill.

| | | | | | | |
|--------|--|--------------|------------------------------------|----|----|----------------------|
| 20(4) | Jams, Jellies and Marmalades, canned, bottled or otherwise packed. | Protective . | 40 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952. |
| 20 (5) | Juices either individually or in mixture, of the following fruits, namely : Apricots, Berries, Grapes, Pineapple, Plums and Prunes— | | | | | |
| | (a) manufactured in a British Colony. | Revenue . | 30 per cent. <i>ad valorem.</i> | .. | .. | .. |
| | (b) not manufactured in a British Colony. | Revenue . | 30 per cent. <i>ad valorem</i> | .. | .. | . |

(iv) for Items Nos. 20 (8) and 20 (9), the following Items shall be substituted, namely :—

| | | | | | | |
|----------|---|--------------|------------------------------------|----|----|-------------------------|
| " 20 (8) | The following fruits, canned or otherwise packed, namely : Apricots, Berries, Grapes, Plums and Prunes, and fruit salads composed not less than 80 per cent. in quantity and in value of the above named fruits— | | | | | |
| | (a) manufactured in a British Colony. | Protective . | 30 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952. |
| | (b) not manufactured in a British Colony. | Protective . | 30 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952. |
| 20 (9) | Pineapples, canned or otherwise packed— | | | | | |
| | (a) manufactured in a British Colony. | Protective . | 25 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952. |
| | (b) not manufactured in a British Colony. | Protective . | 35 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952." ; |

(v) for Item No. 48 (1), the following Item shall be substituted, namely:—

| | | | | | | |
|----------|---|--------------|--|----|----|------------------------------|
| “ 48 (1) | Fabrics, not otherwise specified, containing more than 90 per cent. of artificial silk— | | | | | |
| | (a) of British manufacture. | Protective . | 30 per cent. <i>ad valorem</i> or 2½ annas per square yard, which- ever is higher. | .. | .. | December 31st, 1952. |
| | (b) not of British manufacture. | Protective . | 50 per cent. <i>ad valorem</i> or four annas per square yard, whichever is higher. | .. | .. | December 31st, 1952.”; |

(vi) for Item Nos. 48 (4) and 48 (5), the following Items shall be substituted, namely:—

| | | | | | | |
|---------|--|--------------|--|----|----|----------------------------|
| “ 48(4) | Fabrics, not otherwise specified, containing more than 10 per cent. and not more than 90 per cent. silk— | | | | | |
| | (a) containing more than 50 per cent. of silk or artificial silk or of both. | Protective . | 50 per cent. <i>ad valorem</i> <i>plus</i> Rs. 2 per lb. | .. | .. | December 31st, 1952. |
| | (b) containing not more than 50 per cent. of silk or artificial silk or of both— | | | | | |
| | (c) containing more than 10 per cent. artificial silk. | Protective . | 50 per cent. <i>ad valorem</i> or Rs. 1-8-0 per lb., whichever is higher. | .. | .. | |

| | | | | | | |
|-------|---|------------|--|----|----|-------------------------------|
| 48(5) | (ii) containing no artificial silk or not more than 10 per cent. artificial silk. | Protective | 50 per cent <i>ad valorem</i> . | .. | .. | December 31st, 1952. |
| | Fabrics, not otherwise specified, containing no silk or containing not more than 10 per cent. silk but more than 10 per cent. and not more than 90 per cent. artificial silk— | | | | | |
| | (a) containing 50 per cent. or more cotton— | | | | | |
| | (i) of British manufacture. | Protective | 30 per cent. <i>ad valorem</i> or 2 annas per square yard, which- ever is higher. | .. | .. | December, 31st, 1952. |
| | (ii) not of British manufacture. | Protective | 50 per cent. <i>ad valorem</i> or 3½ annas per square yard, which- ever is higher. | .. | .. | December, 31st, 1952. |
| | (b) containing no cotton or containing less than 50 per cent. cotton— | | | | | |
| | (i) of British manufacture. | Protective | 30 per cent. <i>ad valorem</i> or 2½ annas per square yard, whichever is higher. | .. | .. | December, 31st, 1952. |
| | (ii) not of British manufacture. | Protective | 50 per cent. <i>ad valorem</i> or 4 annas per square yard, whichever is higher. | .. | .. | December, 31st, 1952.”; |

(vii) in Item No. 48 (6), in the entry in the second column, after the word “specified”, the words “containing no silk or artificial silk or” shall be inserted ;

(viii) for Item No. 48 (7), the following Item shall be substituted, namely:—

| | | | | | | |
|---------------------------------|---|------------------------------------|----|----|-----------------------|--|
| "48(7) | Fabrics, not otherwise specified, containing not more than 10 per cent. silk or 10 per cent. artificial silk or 10 per cent. wool, but containing more than 50 per cent. cotton and not more than 90 per cent. cotton-- | | | | | |
| (a) of British manufacture. | Protective . | 25 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952. | |
| (b) not of British manufacture. | Protective . | 50 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952." | |

(ix) for Item No. 72 (33), the following Item shall be substituted, namely:—

| | | | | | | |
|---------|-------------------------------------|--------------|------------------------------------|----|----|-----------------------|
| "72(33) | Pickers used in textile industries. | Protective . | 10 per cent. <i>ad valorem.</i> | .. | .. | December 31st, 1952." |
|---------|-------------------------------------|--------------|------------------------------------|----|----|-----------------------|

STATEMENT OF OBJECTS AND REASONS

The object of the present Bill is to amend the First Schedule to the Indian Tariff Act, 1934 (XXXII of 1934) in order to extend the period of protection to the following industries on the advice of the Tariff Board:—

- (a) Preserved fruits.
- (b) Artificial silk and cotton and artificial silk mixed fabrics, and
- (c) Pickers used in textile industries.

2. As regards (a), there are seven Tariff Items relating to fruit products which are subject to protective duties. Protection will be continued in respect of five items but withdrawn in respect of two. The effect of the amendments on the rates of duty under these items is indicated below:—

(i) *Fruits in syrup. Items Nos. 20 (3), 20 (8) and 20 (9).*

The standard rate will be reduced from 60 per cent. to 36 per cent. *ad valorem* the preferential rates being suitably adjusted.

(ii) *Fruits, candied and crystallised and jams, jellies and marmalades. Items Nos. 8 (3) and 20 (4).*

The rate will be reduced from 80 per cent. to 40 per cent. *ad valorem.*

(iii) *Fruit juices, squashes, cordials and syrups. Items Nos. 20 (1) and 20 (5).*

Protection will be withdrawn and the Standard rate will be reduced from 40 per cent. to 36 per cent. *ad valorem* which was the rate of revenue duty before protection was given, the preferential rates being suitably adjusted.

3. With regard to (b) and (c), no change has been made in the existing rates of duty.

4. Opportunity has also been taken to carry out certain minor amendments of a formal character.

NEW DELHI;

D. P. KARMARKAR,

The 12th April, 1951.

The following Bill was introduced in Parliament on the 17th April, 1951:—

BILL *No. 40 OF 1951.

A

BILL

to declare the institution known as "Visva-Bharati" to be an institution of national importance and to provide for its functioning as a unitary teaching and residential university.

BE it enacted by Parliament as follows:—

PRELIMINARY

1. Short title and commencement.—(1) This Act may be called the Visva-Bharati Act, 1951.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Declaration of Visva-Bharati as an institution of national importance.—Whereas the late Rabindranath Tagore founded an institution known as Visva-Bharati at Santiniketan in the district of Birbhum in West Bengal the objects of which are such as to make the institution one of national importance, it is hereby declared that the institution known as 'Visva-Bharati' aforesaid is an institution of national importance.

3. Definitions.—In this Act and in all Statutes made hereunder, unless the context otherwise requires,—

(a) "Siksha Samiti" (Academic Council) means the Siksha Samiti (Academic Council) of the University;

(b) "Alumni Association" means the Association of the Alumni of the University constituted under the provisions of this Act and the Statutes;

(c) "Samsad" (Court) means the Samsad (Court) of the University;

(d) "Karma Samiti" (Executive Council) means the Karma Samiti (Executive Council) of the University;

(e) "Bhavan" (Hall) means a unit of residence with provision for tutorial instruction for students provided or recognised by the University;

(f) "Chatravasa" (Hostel) means a unit of residence for students provided or recognised by the University;

(g) "Statutes", "Ordinances" and "Regulations" mean respectively the Statutes, Ordinances and Regulations of the University for the time being in force;

(h) "teachers" means such persons as are engaged in imparting instruction and guiding students in practical work or otherwise in the University and in the institutions under its control, and includes professors, readers, lecturers, demonstrators and other grades of teachers appointed by the University;

*The President has in pursuance of clause (3) of article 117 of the Constitution of India, recommended to Parliament the consideration of the Bill.

(i) "University" means the institution known as Visva-Bharati incorporated as a University under this Act.

THE UNIVERSITY

4. Incorporation.—The first Acharya (Chancellor) and Upacharya (Vice-Chancellor) of the University who shall be the persons appointed in this behalf by the Central Government by notification in the Official Gazette, and the first members of the Samsad (Court), and all persons, who may hereafter become or be appointed as such officers or members, so long as they continue to hold such office or membership, are hereby constituted a body corporate by the name of Visva-Bharati, and shall have perpetual succession and a common seal, and shall sue and be sued by that name.

5. Effect of incorporation of the University in certain cases.—On and from the commencement of this Act,—

(i) all references in any enactment to the Society of the name of Visva-Bharati registered on the 16th May, 1922, under the Societies Registration Act, 1860 (XXI of 1860) shall be construed as references to the University;

(ii) any will, deed or other document whether made or executed before or after the commencement of this Act, which contains any bequest, gift or trust in favour of the said Society shall, on the commencement of this Act be construed as if the University was therein named instead of the said Society;

(iii) subject to the provisions of this Act, every person employed immediately before the commencement of this Act in the said Society shall hold employment in the University by the same tenure and upon the same terms and conditions and with the same rights and privileges as to pension and gratuity as he would have held under the said Society, if this Act had not been passed:

Provided that if the University decides to alter the terms and conditions of service of any such employee, a fresh contract shall be executed for the purpose, and if the employee is not agreeable to serve under the new terms and conditions, his services may be terminated in accordance with his original contract of employment or, if no provision is made therein in this behalf, on payment to him by way of compensation of an amount equal to his salary for six months.

6. Powers of the University.—The University shall exercise the following powers and perform the following duties, namely:—

(a) to provide for research and instruction in such branches of learning as may be deemed desirable and be found practicable and for the promotion of understanding of cultures between the East and the West and for the advancement of learning and dissemination of knowledge generally;

(b) to maintain colleges and Bhavans (halls) or recognise colleges and Bhavans (halls) not maintained by the University and to withdraw such recognition;

(c) to organise, establish, affiliate, carry on and maintain or dissolve, disaffiliate or give up new branches or associated institutions having objects similar to those of the University;

(d) to co-operate with educational or other institutions in any part of the world having objects wholly or partly similar to those of the University by exchange of teachers, scholars and generally in such manner as may be conducive to their common objects;

(e) to provide for the promotion of rural reconstruction, social welfare, development of cottage industries, and all other nation-building activities and works of public benefit;

(f) to hold examinations and grant such degrees, diplomas and other academic distinctions or titles to persons as may be laid down in the Statutes, Ordinances or Regulations;

(g) to institute and appoint persons to professorships, readerships, lecturerships, fellowships and chairs or posts of any description;

(h) to frame Statutes, Ordinances or Regulations, and alter, modify or rescind the same;

(i) to receive gifts, donations or benefactions from Government and to receive bequests, donations, and transfers of movable or immovable properties from testators, donors or transferors, as the case may be;

(j) to deal with any property belonging to or vested in the University in such manner as to the University may seem fit for advancing the objects of the University;

(k) to do all such things as may be incidental or conducive to the attainment of the objects of the University or any of them.

7. Territorial jurisdiction of the University.—Save as otherwise provided in this Act, the powers of the University conferred by or under this Act shall be restricted to the area specified in the Schedule.

8. University to be open to all races, creeds and classes.—Subject to the Ordinances, the University shall be open to all persons irrespective of sex, nationality, race, creed, caste or class, and no test or condition shall be imposed as to religious belief or profession in admitting or appointing members, students, teachers, workers, or in any other connection whatsoever, except in respect of any particular benefaction accepted by the University of which such test is made a condition by the instrument creating such benefaction:

Provided that no benefaction shall hereafter be accepted which in the opinion of the authorities of the University involves conditions or obligations opposed to the spirit and object of this section:

Provided further that nothing in this section shall be deemed to prevent religious instruction being given in any manner approved of by the authorities concerned to those who have given their consent thereto by teachers duly and properly authorised for that purpose.

9. Teaching at the University.—All recognised teaching at the University shall be conducted by and in the name of the University in accordance with the Statutes and Ordinances made in this behalf.

THE PARIDARSAKA (VISITOR)

10. The Paridarsaka (Visitor).—(1) The President shall be the Paridarsaka (Visitor) of the University.

(2) The Paridarsaka (Visitor) shall have the right to cause an inspection to be made by such person or persons as he may direct, of the University, its buildings, laboratories and equipment, and of any institution maintained by the University and also of the examinations, teaching and

other work conducted or done by the University, and to cause an inquiry to be made in like manner in respect of any matter connected with the University.

(3) The Paridarsaka (Visitor) shall in every case give notice to the University of his intention to cause an inspection or inquiry to be made, and the University shall be entitled to be represented thereat.

(4) The Paridarsaka (Visitor) may address the Upacharya (Vice-Chancellor) with reference to the result of such inspection and inquiry, and the Upacharya (Vice-Chancellor) shall communicate to the Karma Samiti (Executive Council) the views of the Paridarsaka (Visitor) with such advice as the Paridarsaka (Visitor) may offer upon the action to be taken thereon.

(5) The Karma Samiti (Executive Council) shall communicate through the Upacharya (Vice-Chancellor) to the Paridarsaka (Visitor) such action, if any, as it is proposed to take or has been taken on the result of such inspection or inquiry.

(6) Where the Karma Samiti (Executive Council) does not, within a reasonable time, take action to the satisfaction of the Paridarsaka (Visitor), the Paridarsaka (Visitor) may, after considering any explanation furnished or representation made by the Karma Samiti (Executive Council), issue such directions as he may think fit, and the Karma Samiti (Executive Council) shall comply with such directions.

(7) The Karma Samiti (Executive Council) shall report to the Samsad (Court) at the next annual meeting the action, if any, that may have been taken or is proposed to be taken as a result of the inquiry made and the advice given by the Paridarsaka (Visitor).

THE PRADHANA (RECTOR)

11. The Pradhana (Rector).—The Governor of West Bengal shall be the Pradhana (Rector) of the University.

OFFICERS OF THE UNIVERSITY

12. Officers of the University.—The following shall be the officers of the University:—

- (i) the Acharya (Chancellor),
- (ii) the Upacharya (Vice-Chancellor),
- (iii) the Artha-Sachiva (Treasurer), and
- (iv) such other officers as may be declared by the Statutes to be officers of the University.

13. The Acharya (Chancellor).—(1) The successors to the first Acharya (Chancellor) shall be elected by the Samsad (Court) in the manner prescribed by the Statutes.

(2) The Acharya (Chancellor) shall hold office for three years, and by virtue of his office, be the Head of the University.

(3) The Acharya (Chancellor) shall, if present, preside at the Convocations of the University and at meetings of the Samsad (Court).

(4) Every proposal for the conferment of an honorary degree shall be subject to the confirmation of the Acharya (Chancellor).

(5) The Acharya (Chancellor) shall have such other powers as may be conferred on him by this Act or the Statutes.

14. The Upacharya (Vice-Chancellor).—(1) The Upacharya (Vice-Chancellor) shall be the principal academic and executive officer of the University, and the terms and conditions of service of the Upacharya (Vice-Chancellor) shall be as laid down by the Statutes.

(2) The Upacharya (Vice-Chancellor) shall exercise such powers and perform such functions as may be prescribed by the Statutes.

(3) The mode of appointment of the successors to the first Upacharya (Vice-Chancellor) shall be as laid down in the Statutes.

15. The Artha-Sachiva (Treasurer).—The Artha-Sachiva (Treasurer) shall be appointed in such manner, upon such conditions and for such period as may be laid down in the Statutes, and shall exercise general supervision over the funds of the University and shall perform such functions as may be prescribed by the Statutes and the Ordinances.

16. Other officers.—The powers of officers of the University other than the Acharya (Chancellor), the Upacharya (Vice-Chancellor) and the Artha-Sachiva (Treasurer) shall be as prescribed by the Statutes.

AUTHORITIES OF THE UNIVERSITY

17. Authorities of the University.—The following shall be authorities of the University:—

- (1) the Samsad (Court),
- (2) the Karma Samiti (Executive Council),
- (3) the Siksha Samiti (Academic Council), and
- (4) such other authorities as may be declared by the Statutes to be authorities of the University.

18. The Samsad (Court).—(1) The Samsad (Court) shall consist of the following persons, namely:—

Class I—Ex-officio members

- (i) the Acharya (Chancellor),
- (ii) the Upacharya (Vice-Chancellor),
- (iii) the Minister of Education in the Government of West Bengal,
- (iv) the Artha-Sachiva (Treasurer),
- (v) principals of colleges,
- (vi) heads of departments,

Class II—Life members

(vii) persons who have been *pradhana*s of the Visva-Bharati Society immediately before the commencement of this Act,

(viii) such persons as may be appointed by the Paridarsaka (Visitor) either on his own motion or on the recommendation of the

Karma Samiti (Executive Council) to be life members of the Samsad (Court) on the ground that they have rendered eminent service to education,

Class III—Other Members

(ix) representatives of the Alumni Association elected from among its own members,

(x) persons elected from among their own body by donors of such amounts as may be prescribed by the Statutes to or for the purposes of the University,

(xi) persons elected by Siksha Samiti (Academic Council) from among its own members,

(xii) representatives of Parliament elected by it,

(xiii) persons co-opted by the Samsad (Court),

(xiv) persons nominated by the Paridarsaka (Visitor),

(xv) persons nominated by the Pradhana (Rector),

(xvi) persons nominated by the Acharya (Chancellor).

(2) The number of members to be appointed, elected, co-opted or nominated under clauses (viii) to (xvi) of sub-section (1) and the tenure of office of members to be elected, co-opted or nominated under each clause of Class III of that sub-section and the mode of election of members to be elected shall be prescribed by the Statutes.

19. Meetings of the Samsad (Court).—(1) The Samsad (Court) shall, on a date to be fixed by the Upacharya (Vice-Chancellor), meet once a year at a meeting to be called the annual meeting of the Samsad (Court).

(2) The Upacharya (Vice-Chancellor) may, whenever he thinks fit, and shall, upon a requisition in writing signed by not less than one-third of the members of the Samsad (Court), convene a special meeting of the Samsad (Court).

20. Powers and duties of the Samsad (Court).—(1) The Samsad (Court) shall be the supreme governing body of the University and shall exercise all the powers of the University, not otherwise provided for by this Act, the Statutes, the Ordinances and the Regulations, and shall have power to review the acts of the Karma Samiti and Siksha Samiti (Executive and Academic Councils).

(2) Subject to the other provisions contained in this Act, the Samsad (Court) may—

(a) make Statutes;

(b) consider the Ordinances and the Regulations;

(c) consider and pass such resolutions on the annual report, the annual accounts and the financial estimates as it thinks fit;

(d) elect such persons to serve on authorities of the University and appoint such officers as may be prescribed by this Act or the Statutes; and

(e) exercise such other powers and perform such other duties as may be conferred or imposed upon it by this Act or the Statutes.

21. The Karma Samiti (Executive Council).—The Karma Samiti (Executive Council) shall be the executive body of the University and its constitution and the term of office of its members shall be prescribed by the Statutes.

22. Power and duties of the Karma Samiti (Executive Council).—The Karma Samiti (Executive Council)—

(a) shall hold, control and administer the property and funds of the University, and for these purposes it shall have a Standing Finance Committee whose constitution and powers and duties shall be defined by the Statutes;

(b) shall determine the form, provide for the custody and regulate the use, of the common seal of the University;

(c) shall submit to the Central Government annually a full statement of the financial requirements of the University;

(d) shall administer any funds placed at the disposal of the University for specific purposes;

(e) subject to the provisions of the Act and the Statutes, shall appoint the officers [other than the Acharya (Chancellor), the Upacharya (Vice-Chancellor), and the Artha-Sachiva (Treasurer)] teachers and other servants of the University, and shall define their duties and the conditions of their service, and shall provide for the filling of temporary vacancies in their posts;

(f) shall have power to accept on behalf of the University transfers of any movable or immovable property;

(g) shall appoint examiners after consideration of the recommendations of the Siksha Samiti (Academic Council);

(h) shall arrange for the holding of, and publish the results of the University examinations;

(i) may delegate, subject to such conditions as may be prescribed by the Ordinances its power to appoint officers, teachers and other servants of the University to such person or authority as the Karma Samiti (Executive Council) may determine;

(j) shall exercise such other powers and perform such other duties as may be conferred or imposed on it by this Act or the Statutes:

Provided that no action shall be taken by the Karma Samiti (Executive Council) in respect of the number, qualifications and status of teachers, otherwise than on a recommendation of the Siksha Samiti (Academic Council);

(k) shall exercise all other powers of the University not otherwise provided for by this Act or the Statutes.

23. The Siksha Samiti (Academic Council).—(1) The Siksha Samiti (Academic Council) shall be the academic body of the University, and shall, subject to the provisions of this Act, the Statutes and the Ordinances, have the control and general regulation, and be responsible for the maintenance of standards of instruction, education and examination within the University, and shall exercise such other powers and perform such other

duties as may be conferred or imposed upon it by the Statutes and shall have the right to advise the Karma Samiti (Executive Council) on all academic matters.

(2) The constitution of the Siksha Samiti (Academic Council) and the terms of office of its members shall be prescribed by the Statutes.

24. Other authorities of the University.—The constitution, powers and duties of such other authorities as may be declared by the Statutes to be authorities of the University shall be as provided for in the Statutes.

25. Alumni Association.—The University shall have an Alumni Association open to past students and past workers of the University, including members of the Asramika Sangha of the former Visva-Bharati Society, on such conditions as may be laid down in the Statutes.

STATUTES, ORDINANCES AND REGULATIONS.

26. Statutes.—Subject to the provisions of this Act, the Statutes may provide for all or any of the following matters, namely:—

- (a) the conferment of honorary degrees;
- (b) the institution of fellowships, scholarships, exhibitions, medals and prizes;
- (c) the designations and powers of the officers of the University;
- (d) the terms of office and the method and conditions of election or appointment of the officers of the University;
- (e) the constitution, powers and duties of the authorities of the University;
- (f) the classification and mode of appointment and the determination of the terms and conditions of service of teachers of the University;
- (g) the institution and maintenance of Bhawanas (Halls) and Chatravasas (hostels);
- (h) the constitution of pension, insurance and provident fund for the benefit of the officers, teachers and other servants of the University;
- (i) the constitution and activities of the Alumni Association;
- (j) the discipline of students; and
- (k) any other matters which by this Act are to be or may be prescribed by the Statutes.

27. Statutes how made.—(1) The first Statutes shall be framed by the Central Government.

(2) The Statutes may be amended, repealed or added to by Statutes made by the Samsad (Court) in the manner hereinafter appearing.

(3) The Karma Samiti (Executive Council) may propose to the Samsad (Court) the draft of any Statute to be passed by the Samsad (Court), and such draft shall be considered by the Samsad (Court) at its next succeeding meeting. The Samsad (Court) may approve such draft and pass the Statute, or may reject it or return it to the Karma Samiti (Executive Council) for reconsideration, either in the whole or in part, together with any amendments which the Samsad (Court) may suggest.

(4) After any draft so returned has been further considered by the Karma Samiti (Executive Council), together with any amendments suggested by the Samsad (Court) returned thereto, it shall be again presented to the Samsad (Court) with the report of the Karma Samiti (Executive Council) thereon, and the Samsad (Court) may then deal with the draft in any way it thinks fit.

(5) Where any Statute has been passed or a draft of a Statute or part thereof has been rejected by the Samsad (Court), it shall be submitted to the Paridarsaka (Visitor), who may refer the Statute or draft back to the Samsad (Court) for further consideration or, in the case of a Statute passed by the Samsad (Court), assent thereto or withhold his assent.

(6) A Statute passed by the Samsad (Court) shall have no validity until it has been assented to by the Paridarsaka (Visitor).

(7) The Karma Samiti (Executive Council) shall not propose the draft of any Statute affecting the status, powers or constitution of any authority of the University until such authority has been given an opportunity of expressing an opinion upon the proposal, and any opinion so expressed shall be in writing and shall be considered by the Samsad (Court), and shall be submitted to the Paridarsaka (Visitor).

(8) The Samsad (Court) may of its own motion take into consideration the draft of any Statute:

Provided that in any such case before a Statute is passed affecting the powers or duties of the Acharya (Chancellor), the Upacharya (Vice-Chancellor) or the Artha-Sachiva (Treasurer) or any authority or board, the opinion of the Karma Samiti (Executive Council) and a report from the person or body concerned shall have been taken into consideration by the Samsad (Court).

28. Ordinances.—Subject to the provisions of this Act and the Statutes, the Ordinances may provide for all or any of the following matters, namely:—

- (a) the admission of students to the University;
- (b) the courses of study to be laid down for all degrees and diplomas of the University;
- (c) the conditions under which students shall be admitted to the degree or diploma courses and to the examinations of the University and shall be eligible for degrees and diplomas;
- (d) the conditions of the award of the fellowships, scholarships, exhibitions, medals and prizes;
- (e) the conditions, mode of appointment and duties of examining bodies, examiners and moderators;
- (f) the conduct of examinations;
- (g) the conditions of residence of the students of the University and the levying of fees for residence in Bhawanas (Halls) and Chatra-vasas (Hostels) and of other charges;
- (h) the fees to be charged for courses of study in the University and for admission to the examinations, degrees, and diplomas of the University;
- (i) the maintenance of discipline among the students of the University;
- (j) the number and qualifications of teachers of the University;

(k) the formation of departments of teachers; and

(l) any other matters which by this Act or the Statutes are to be or may be provided for by the Ordinances.

29. Ordinances, how made.—(1) Save as otherwise provided in this section, Ordinances shall be made by the Karma Samiti (Executive Council):

Provided that—

(a) no Ordinance shall be made affecting the admission or enrolment of students, or prescribing examinations to be recognised as equivalent to the University examinations unless a draft of the same has been proposed by the Siksha Samiti (Academic Council); and

(b) no Ordinance shall be made affecting the conditions, mode of appointment or duties of examiners or the conduct or standard of examinations or any course of study, except in accordance with a proposal of the Siksha Samiti (Academic Council) and unless a draft of such Ordinance has been proposed by the Siksha Samiti (Academic Council) in the manner prescribed by the Statutes; and

(c) no Ordinance shall be made affecting the conditions of residence of students, except after compliance with such conditions as may be prescribed by the Statutes.

(2) The Karma Samiti (Executive Council) shall not have the power to amend any draft proposed by the Siksha Samiti (Academic Council) under the provisions of sub-section (1), but may reject it or return it to the Siksha Samiti (Academic Council) for reconsideration either in whole or in part, together with any amendments which the Karma Samiti (Executive Council) may suggest.

(3) All Ordinances made by the Karma Samiti (Executive Council) shall have effect from such date as it may direct, but every Ordinance so made shall be submitted, as soon as may be, to the Paridarsaka (Visitor) and the Samsad (Court), and shall be considered by the Samsad (Court) at its next succeeding meeting.

(4) The Samsad (Court) shall have power by a resolution passed by a majority of not less than two-thirds of the members present at such meeting to cancel any such Ordinance and such Ordinance shall, from the date of such resolution, be void.

(5) The Paridarsaka (Visitor) may, at any time after any Ordinance has been considered by the Samsad (Court), signify to the Samsad (Court) and the Karma Samiti (Executive Council) his disallowance of such Ordinance, and from the date of receipt by the Karma Samiti (Executive Council) of intimation of such disallowance, such Ordinance shall become void.

(6) The Paridarsaka (Visitor) may direct that the operation of any Ordinance shall be suspended until he has had an opportunity of exercising his power of disallowance and any order of suspension under this subsection shall cease to have effect on the expiration of one month from the date of such order, or on the expiration of fifteen days from the date of consideration of the Ordinance by the Samsad (Court), whichever period expires later.

(7) Where the Karma Samiti (Executive Council) has rejected the draft of an Ordinance proposed by the Siksha Samiti (Academic Council),

the Siksha Samiti (Academic Council) may appeal to the Samsad (Court) which, after obtaining the views of the Karma Samiti (Executive Council), may, if it approves the draft make the Ordinance and submit it to the Paridarsaka (Visitor), for approval.

30. Regulations.—(1) The authorities of the University may make Regulations consistent with this Act, the Statutes and the Ordinances—

(a) laying down the procedure to be observed at their meetings and the number of members required to form a quorum;

(b) providing for all matters which by this Act, the Statutes or the Ordinances are to be prescribed by the Regulations; and

(c) providing for all other matters solely concerning such authorities or committees appointed by them and not provided for by this Act, the Statutes and the Ordinances.

(2) Every authority of the University shall make Regulations providing for the giving of notice to the members of such authority of the dates of meetings and of the business to be considered at meetings and for the keeping of a record of the proceedings of meetings.

(3) The Karma Samiti (Executive Council) may direct the amendment, in such manner as it may specify, of any Regulation made under this section or the amendment of any Regulation made under sub-section (1).

31. Residence.—Every student of the University shall reside in a Bhavan (Hall) or Chatravasa (Hostel) or under such conditions as may be prescribed by the Statutes and the Ordinances.

ADMISSION AND EXAMINATIONS

32. Admission.—Admission of students to the University shall be made in such manner as may be prescribed by the Ordinances.

33. Examinations.—Subject to the provisions of the Statutes, all arrangements for the conduct of examinations shall be made by the Karma Samiti (Executive Council) in such manner as may be prescribed by the Ordinances.

ANNUAL REPORTS AND ACCOUNTS

34. Annual reports.—(1) The annual report of the University shall be prepared under the directions of the Karma Samiti (Executive Council), and shall be submitted to the Samsad (Court) on or before such date as may be prescribed by the Statutes, and shall be considered by the Samsad (Court) at its annual meeting.

(2) The Samsad (Court) may pass resolutions on the annual report and communicate the same to the Karma Samiti (Executive Council) which shall take such action as it thinks fit, and the Karma Samiti (Executive Council) shall inform the Samsad (Court) of the action taken by it, and when no action is taken, of its reasons therefor.

35. Annual accounts.—(1) The annual accounts and balance-sheet of the University shall be prepared under the direction of the Karma Samiti (Executive Council), and shall be submitted to the Central Government.

(2) The audit of the accounts of the University shall be carried out according to the directions of the Central Government.

(3) Copies of the audited accounts together with copies of the audit report, if any, shall be submitted to the Samsad (Court) and to the Paridarsaka (Visitor).

(4) The annual accounts and the financial estimates shall be considered by the Samsad (Court) at its annual meeting, and the Samsad (Court) may pass resolutions thereon and communicate the same to the Karma Samiti (Executive Council) which shall take them into consideration and take such action thereon as it thinks fit or inform the Samsad (Court), when no action is taken, of its reasons therefor.

SUPPLEMENTARY PROVISIONS

36. Conditions of service of officers and teachers.—Every salaried officer and teacher of the University shall be appointed under a written contract, which shall be lodged with the University and a copy of which shall be furnished to the officer or teacher concerned.

37. Tribunal of Arbitration.—Every dispute arising out of a contract between the University and any of its officers or teachers shall be referred to a Tribunal of Arbitration consisting of one member appointed by the Karma Samiti (Executive Council), one member nominated by the officer or teacher concerned and an umpire appointed by the Paridarsaka (Visitor), and the decision of the Tribunal shall be final.

38. Pension and provident funds.—(1) The University shall constitute, for the benefit of its officers [including the Upacharya (Vice-Chancellor)], teachers, and other servants, in such manner and subject to such conditions as may be prescribed by the Statutes, such pension, insurance and provident funds as it may deem fit.

(2) Where any such pension, insurance or provident fund has been so constituted, the Central Government may declare that the provisions of the Provident Funds Act, 1925 (XIX of 1925), shall apply to such fund as if it were a Government Provident Fund.

39. Filling of casual vacancies.—(1) Subject to any provision in this Act and in the Statutes, the Karma Samiti (Executive Council), shall appoint with the approval of the Paridarsaka (Visitor) a person to fill a casual vacancy in the office of the Upacharya (Vice-Chancellor), and the person so appointed shall hold office till the next meeting of the Samsad (Court).

(2) All casual vacancies among the members (other than *ex-officio* members) of any authority or other body of the University shall be filled, as soon conveniently may be, by the person or body, who appointed, elected or co-opted the member whose place has become vacant, and the person appointed, elected or co-opted to a casual vacancy shall be member of such authority or body for the residue of the term for which the person whose place he fills would have been a member.

40. Removal from membership of the University.—The Samsad (Court) may, on the recommendation of not less than two-thirds of the members of the Karma Samiti (Executive Council) remove any person from membership of any authority or board of the University in case of a serious offence involving moral turpitude, or if he has been guilty of scandalous conduct and for the same reasons may withdraw any degree or diploma conferred or granted by the University.

41. Disputes as to constitution of any University, authority or bodies.—If any question arises whether any person has been duly elected or appointed as, or is entitled to be, a member of any authority or other body of the University, the matter shall be referred to the Paridarsaka (Visitor), whose decision thereon shall be final.

42. Constitution of committees.—Where any authority of the University is given power by this Act or by the Statutes to appoint committees, such committee shall, unless there is some special provision to the contrary, consist of members of the authority concerned and of such other persons (if any) as the authority in each case may think fit.

43. Proceedings of the University authorities not invalidated by vacancies.—No act or proceeding of any authority or other body of the University shall be invalidated merely by reason of the existence of a vacancy or vacancies among its members.

44. Power to remove difficulties.—If any difficulty arises with respect to the establishment of the University or any authority of the University or in connection with the first meeting of any authority of the University, the Central Government may, by order, make any appointment or do anything which appears to it necessary or expedient for the proper establishment of the University or any authority thereof or for the first meeting of any authority of the University.

THE SCHEDULE

(See section 7)

The territorial limits of the University.

The area known as Santiniketan in the District of Birbhum in West Bengal, admeasuring 11.5 square miles, bounded—

on the north by the Kopai River,

on the west by a line running from Ballavpur and Bonuri villages to Bandgora,

on the south by a line running from Bandgora via Bolpur Dak Bungalow to the bridge over the East Indian Railway cutting and

on the east by the East Indian Railway line.

STATEMENT OF OBJECTS AND REASONS

The Visva-Bharati founded by Dr. Rabindranath Tagore at Santiniketan in 1921 is a unique institution, and has since its inception served as a centre for the study of, and research in, the different cultures of the East on the basis of their underlying unity, and has sought to approach the West from the standpoint of such a unity of the life and thought of Asia. The institution has acquired a world-wide recognition and has attracted scholars and pupils from many countries all over the world.

2. The University Education Commission commended the special and very valuable work done by this institution, particularly its "effort to discover, preserve and transmit the vast elements of old Indian culture, and the work with the surrounding villages" and recommended that the Visva-Bharati should be given a provisional Charter as a University with suitable capital and recurring grants. The recommendations of the

University Education Commission were approved by the Central Advisory Board of Education at its meeting in April, 1950, and the Government of West Bengal agree to the establishment of a unitary, teaching and residential University at Santiniketan by an Act of Parliament.

3. There is no provision in the Constitution of India for the grant of a Charter (as distinct from an Act) as recommended by the University Education Commission, but the Constitution makes the Union Government responsible for institutions declared by law to be of national importance (*vide* item 63 of List I of the Seventh Schedule to the Constitution).

4. It is, therefore, proposed to make such a declaration and have the Visva-Bharati constituted as a Central University. The constitution that is proposed to be given to Visva-Bharati is in conformity with the recommendations made by the University Education Commission with such modifications as are considered necessary to preserve the tradition and special features of the institution.

ABUL KALAM AZAD.

NEW DELHI;

The 31st March, 1951.

M. N. KAUL,
Secretary.

